



**APPLICATIONS:**

**APPEAL APPLICATION**

Instructions and Checklist

**Related Code Section:** Refer to the City Planning case determination to identify the Zone Code section for the entitlement and the appeal procedure.

**Purpose:** This application is for the appeal of Department of City Planning determinations authorized by the Los Angeles Municipal Code (LAMC).

**A. APPELLATE BODY/CASE INFORMATION**

**1. APPELLATE BODY**

- Area Planning Commission     City Planning Commission     City Council     Director of Planning
- Zoning Administrator

Regarding Case Number: CPC-2016-3689-GPA-VZC-HD-MCUP-DB-SPR

Project Address: 668-678 South Mateo Street and 669-679 South Imperial Street (676 Mateo Project)

Final Date to Appeal: 12/22/2021

**2. APPELLANT**

**Appellant Identity:**  
(check all that apply)

- Representative     Property Owner
- Applicant     Operator of the Use/Site

Person, other than the Applicant, Owner or Operator claiming to be aggrieved  
Coalition for Responsible Equitable Economic Development Los Angeles (CREED LA)

Person affected by the determination made by the **Department of Building and Safety**

- Representative     Owner     Aggrieved Party
- Applicant     Operator

**3. APPELLANT INFORMATION**

Appellant's Name: CREED LA c/o Kendra Hartmann

Company/Organization: Adams, Broadwell, Joseph & Cardozo

Mailing Address: 601 Gateway Blvd. Ste. 1000

City: South San Francisco    State: CA    Zip: 94080

Telephone: (650) 589-1660    E-mail: khartmann@adamsbroadwell.com

a. Is the appeal being filed on your behalf or on behalf of another party, organization or company?

- Self     Other: CREED LA

b. Is the appeal being filed to support the original applicant's position?     Yes     No

**4. REPRESENTATIVE/AGENT INFORMATION**

Representative/Agent name (if applicable): Kendra Hartmann

Company: Adams, Broadwell, Joseph & Cardozo

Mailing Address: 601 Gateway Blvd., Suite 1000

City: South San Francisco State: CA Zip: 94080

Telephone: (650) 589-1660 E-mail: khartmann@adamsbroadwell.com

**5. JUSTIFICATION/REASON FOR APPEAL**

a. Is the entire decision, or only parts of it being appealed?  Entire  Part

b. Are specific conditions of approval being appealed?  Yes  No

If Yes, list the condition number(s) here: All conditions approved by City Planning Commission

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

**6. APPLICANT'S AFFIDAVIT**

I certify that the statements contained in this application are complete and true:

Appellant Signature:  Date: 12/21/2021

**GENERAL APPEAL FILING REQUIREMENTS**

**B. ALL CASES REQUIRE THE FOLLOWING ITEMS - SEE THE ADDITIONAL INSTRUCTIONS FOR SPECIFIC CASE TYPES**

**1. Appeal Documents**

a. **Three (3) sets** - The following documents are required for each appeal filed (1 original and 2 duplicates) Each case being appealed is required to provide three (3) sets of the listed documents.

- Appeal Application (form CP-7769)
- Justification/Reason for Appeal
- Copies of Original Determination Letter

**b. Electronic Copy**

Provide an electronic copy of your appeal documents on a flash drive (planning staff will upload materials during filing and return the flash drive to you) or a CD (which will remain in the file). The following items must be saved as individual PDFs and labeled accordingly (e.g. "Appeal Form.pdf", "Justification/Reason Statement.pdf", or "Original Determination Letter.pdf" etc.). No file should exceed 9.8 MB in size.

**c. Appeal Fee**

- Original Applicant - A fee equal to 85% of the original application fee, provide a copy of the original application receipt(s) to calculate the fee per LAMC Section 19.01B 1.
- Aggrieved Party - The fee charged shall be in accordance with the LAMC Section 19.01B 1.

**d. Notice Requirement**

- Mailing List - All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC
- Mailing Fee - The appeal notice mailing fee is paid by the project applicant, payment is made to the City Planning's mailing contractor (BTC), a copy of the receipt must be submitted as proof of payment.

**SPECIFIC CASE TYPES - APPEAL FILING INFORMATION**

**C. DENSITY BONUS / TRANSIT ORIENTED COMMUNITES (TOC)**

**1. Density Bonus/TOC**

Appeal procedures for Density Bonus/TOC per LAMC Section 12.22.A 25 (g) f.

**NOTE:**

- Density Bonus/TOC cases, only the *on menu or additional incentives* items can be appealed.
- Appeals of Density Bonus/TOC cases can only be filed by adjacent owners or tenants (must have documentation), and always only appealable to the Citywide Planning Commission.

- Provide documentation to confirm adjacent owner or tenant status, i.e., a lease agreement, rent receipt, utility bill, property tax bill, ZIMAS, drivers license, bill statement etc.

**D. WAIVER OF DEDICATION AND OR IMPROVEMENT**

Appeal procedure for Waiver of Dedication or Improvement per LAMC Section 12.37 I.

**NOTE:**

- Waivers for By-Right Projects, can only be appealed by the owner.
- When a Waiver is on appeal and is part of a master land use application request or subdivider's statement for a project, the applicant may appeal pursuant to the procedures that governs the entitlement.

**E. TENTATIVE TRACT/VESTING**

**1. Tentative Tract/Vesting** - Appeal procedure for Tentative Tract / Vesting application per LAMC Section 17.54 A.

NOTE: Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.

- Provide a copy of the written determination letter from Commission.

**F. BUILDING AND SAFETY DETERMINATION**

- 1.** Appeal of the Department of Building and Safety determination, per LAMC 12.26 K 1, an appellant is considered the **Original Applicant** and must provide noticing and pay mailing fees.

**a. Appeal Fee**

- Original Applicant - The fee charged shall be in accordance with LAMC Section 19.01B 2, as stated in the Building and Safety determination letter, plus all surcharges. (the fee specified in Table 4-A, Section 98.0403.2 of the City of Los Angeles Building Code)

**b. Notice Requirement**

- Mailing Fee - The applicant must pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt as proof of payment.

- 2.** Appeal of the Director of City Planning determination per LAMC Section 12.26 K 6, an applicant or any other aggrieved person may file an appeal, and is appealable to the Area Planning Commission or Citywide Planning Commission as noted in the determination.

**a. Appeal Fee**

- Original Applicant - The fee charged shall be in accordance with the LAMC Section 19.01 B 1 a.

**b. Notice Requirement**

- Mailing List - The appeal notification requirements per LAMC Section 12.26 K 7 apply.
- Mailing Fees - The appeal notice mailing fee is made to City Planning's mailing contractor (BTC), a copy of receipt must be submitted as proof of payment.

**G. NUISANCE ABATEMENT**

**1. Nuisance Abatement** - Appeal procedure for Nuisance Abatement per LAMC Section 12.27.1 C 4

NOTE:

- Nuisance Abatement is only appealable to the City Council.

**a. Appeal Fee**

- Aggrieved Party the fee charged shall be in accordance with the LAMC Section 19.01 B 1.

**2. Plan Approval/Compliance Review**

Appeal procedure for Nuisance Abatement Plan Approval/Compliance Review per LAMC Section 12.27.1 C 4.

**a. Appeal Fee**

- Compliance Review - The fee charged shall be in accordance with the LAMC Section 19.01 B.
- Modification - The fee shall be in accordance with the LAMC Section 19.01 B.

**NOTES**

*A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.*

***Please note** that the appellate body must act on your appeal within a time period specified in the Section(s) of the Los Angeles Municipal Code (LAMC) pertaining to the type of appeal being filed. The Department of City Planning will make its best efforts to have appeals scheduled prior to the appellate body's last day to act in order to provide due process to the appellant. If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, the appeal is automatically deemed denied, and the original decision will stand. The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant.*

This Section for City Planning Staff Use Only		
Base Fee:	Reviewed & Accepted by (DSC Planner):	Date:
Receipt No:	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

# ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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December 21, 2021

\*Not admitted in California.  
Licensed in Colorado.

### **VIA ONLINE SUBMISSION**

Los Angeles City Council  
City of Los Angeles Planning Department  
Online Portal: <https://plncts.lacity.org/oas>

### **VIA EMAIL**

Vince Bertoni, Director of Planning ([vince.bertoni@lacity.org](mailto:vince.bertoni@lacity.org))  
Jivar Afshar, Planner ([jivar.afshar@lacity.org](mailto:jivar.afshar@lacity.org))

**Re: Appeal of City Planning Commission Determinations Regarding  
676 Mateo Street (SCH No. 2018021068; Case No. ENV 2016-3691-  
EIR; CPC-2016-3689-GPA-VZC-HD-MCUP-DB-SPR; Related Case:  
VTT-74550-CN-1A)**

Dear Councilmembers, Planning Department, Mr. Bertoni, Ms. Afshar:

On behalf of the Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”),<sup>1</sup> we submit this appeal of the City Planning Commission’s October 28, 2021 determinations regarding the 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV 2016-3691-EIR; CPC-2016-3689-GPA-VZC-HD-MCUP-DB-SPR) (“Project”), proposed by District Centre, LP, & District Centre-GPA, LP (collectively, “Applicant”).

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<sup>1</sup> 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. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California. Individual members of CREED LA and its member organizations include John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias.

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Specifically, CREED LA hereby appeals the following approvals and recommendations made by the Commission and described in the City's December 2, 2021 Letter of Determination ("LOD") for the Project:

- Adoption of findings, based on the independent judgment of the decision-maker, after consideration of the whole of the administrative record, the Project was assessed in the 676 Mateo Street Project EIR No. ENV-2016-3691-EIR, SCH No. 2018021068, certified on October 28, 2021; and pursuant to California Environmental Quality Act ("CEQA") Guidelines, Sections 15162 and 15164, no subsequent EIR, negative declaration, or addendum is required for approval of the Project;
- Approval and recommendation that the Mayor and City Council adopt, pursuant to the Los Angeles City Charter Section 555 and Section 11 .5.6 of the Los Angeles Municipal Code (LAMC), a General Plan Amendment to the Central City North Community Plan to change the land use designation from Heavy Industrial to Regional Commercial;
- Approval and recommendation that the City Council adopt, pursuant to LAMC Section 12.32 Q, a Vesting Zone and Height District Change from M3-1-RIO to (T)(Q)C2-2-RIO;
- Approval, pursuant to LAMC Section 12.24 W.1, of a Main Conditional Use Permit for the onsite sale of a full-line of alcoholic beverages within four establishments;
- Approval, pursuant to LAMC Section 12.22 A.25(g), of a Density Bonus for a Housing Development Project reserving 11 percent of proposed units as Very Low-Income Restricted Affordable Units for a period of 55 years, with the following requested incentive: a. An On-Menu incentive to reduce the open space requirement by up to 20 percent;
- Approval, pursuant to LAMC Section 16.05, of a Site Plan Review for a project resulting in an increase of 50 or more dwelling units; and Adoption of Modified Conditions of Approval and Amended Findings for the Project.<sup>2</sup>

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<sup>2</sup> 12/2/2021 LOD, p. 1.  
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On September 23, 2021, CREED LA filed an appeal of the Advisory Agency's approval of the Project's proposed Vesting Tentative Tract Map ("VTTM") and certification of the EIR. The City Planning Commission considered that appeal in conjunction with its initial review of the Project's remaining entitlements on October 28, 2021. The City issued two LODs on December 2, 2021, one indicating its denial of the appeal of the VTTM and EIR certification, and the other summarizing the determinations made by the Commission regarding the remaining Project entitlements.

CREED LA further appealed the Planning Commission's denial of its appeal of the VTTM and EIR certification to the City Council on December 13, 2021. The issues and evidence raised in CREED LA's VTTM/EIR appeal are incorporated by reference in this appeal. The City has not set a hearing on the VTTM/EIR appeal. We respectfully request that the City Council set a single hearing to concurrently consider both CREED LA appeals of the Commission's decisions related to the Project, including the appeal of the VTTM and EIR certification and the instant appeal of the Project's other approvals and recommendations described herein.

In accordance with City requirements, this letter supplements CREED LA's Appeal Application (form CP-7769), the original LOD, and a filing fee of \$89.

## **I. REASONS FOR APPEAL**

CREED LA hereby appeals all actions taken by the City Planning Commission at its October 28, 2021 hearing described in the December 2, 2021 LOD, including its finding that no subsequent or supplemental environmental review is required pursuant to CEQA, recommendations that the City Council adopt a General Plan Amendment and Vesting Zone and Height District Change, as well as the Commission's approvals of a Master Conditional Use Permit, Site Plan Review, modified Conditions of Approval, Density Bonus, and Amended Findings.

The reasons for this appeal, as explained more fully below, are that the Commission abused its discretion and violated CEQA, State Land Use and Planning laws, the Los Angeles Municipal Code ("City Code" or "LAMC"), and other applicable laws when it approved and/or recommended approval of the above entitlements. The Commission also lacked substantial evidence to support the

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findings required to approve these entitlements under State and local codes.<sup>3</sup> The Commission lacked substantial evidence to support the environmental findings required for Project approval because the Project's Final EIR fails to comply with the legal requirements of CEQA. As such, the City Council must reverse the City Planning Commission's decision and remand the Project to staff for additional environmental and land use review before considering approval of any land use entitlements sought for the Project.

Substantial evidence in support of the grounds for appeal is set forth in the attached comments and exhibits, including CREED LA's previous comment letters dated January 25, 2021, August 25, 2021 and October 26, 2021, as well as the comments of air quality expert James Clark, Ph.D., and acoustics expert Neil A. Shaw, FASA, FAES,<sup>4</sup> and CREED LA's December 13, 2021 appeal of the Commission's VTTM/EIR approvals.<sup>5</sup> A brief summary of issues is set for the below. We refer the City Council to CREED LA's attached comments for the complete grounds for appeal.

**A. The Commission Lacked Substantial Evidence to Support Its CEQA Findings.**

The Commission took two separately agendized actions related to the Project's CEQA review on October 28, 2021. First, the Commission upheld the Advisory Agency's September 16, 2021 EIR certification made in conjunction with the VTTM approval and conducted its own EIR certification related to the Project's remaining entitlements (Agenda Item No. 7).<sup>6</sup> Second, the Commission considered the Final EIR and made findings, pursuant to CEQA Guidelines Sections 15162 and 15164, that no subsequent EIR, negative declaration, or addendum was required for approval of the Project (Agenda Item No. 8).<sup>7</sup> Both actions violated CEQA. CREED LA has separately appealed the actions taken under Agenda Item No. 7 in its appeal of the VTTM/EIR, filed December 13, 2021, and incorporates the issues raised in that appeal to the extent applicable to this appeal. CREED LA herein

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<sup>3</sup> See *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-15; *Leal v. Gourley*, (2002) 100 Cal. App. 4th 963, 968

<sup>4</sup> Attached as **Exhibits 1 and 2**.

<sup>5</sup> We incorporate by reference all comments included in the expert letters, as well as all comments received by the City regarding the Project, which are in the City's record of proceedings, and reserve the right to submit additional comments and evidence at the hearings on CREED LA's appeals.

<sup>6</sup> See 10/28/2021 City Planning Commission Agenda, Item No. 7.

<sup>7</sup> See 10/28/2021 City Planning Commission Agenda, Item No. 8; 12/2/2021 LOD, p. 1.

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appeals the Commission's findings regarding subsequent CEQA review taken under Agenda Item No. 8.

**1) The Final EIR Should Have Been Revised and Recirculated, Not Certified**

Cities may not approve or carry out a project that will have significant environmental effects without adopting statutory findings regarding either mitigation of the environmental effects or specific considerations that override and outweigh the environmental effects.<sup>8</sup>

As discussed above and in our prior comments, substantial evidence demonstrates that the Project will cause (1) significant, unmitigated impacts from construction and operational emissions, (2) significant, unmitigated impacts to public health from exposure to toxic air contaminants ("TACs"), and (3) significant, unmitigated impacts from construction and operational noise that are not adequately disclosed and mitigated in the Final EIR. The City also failed to require all feasible mitigation measures capable of reducing impacts to the greatest extent feasible, leaving major Project impacts significant and unmitigated, in violation of CEQA's requirements to support adoption of a statement of overriding considerations. Moreover, significant new information was included in the Final EIR, necessitating the recirculation of the Draft EIR to allow the public to meaningfully review and comment on significant impacts or feasible mitigation measures that had previously been omitted. Finally, the Statement of Overriding Considerations adopted by the Advisory Agency and Commission failed to consider whether the Project provides employment opportunities for highly trained workers, as required by CEQA.<sup>9</sup>

Because the City failed to correct the errors and omissions in the Draft EIR's analysis and mitigation of noise, air quality, and public health impacts as required by CEQA, added significant new information, and failed to support its Statement of Overriding Considerations with substantial evidence, the Commission was required to remand the Project to staff to revise and recirculate the EIR for additional public comment before the EIR was certified.

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<sup>8</sup> Pub. Res. Code Section 21081.

<sup>9</sup> Pub. Resources Code, § 21081, subds. (a)(3) and (b).  
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The Commission's actions in (1) upholding the Advisory Agency's EIR certification and CEQA findings and (2) conducting its own EIR certification and making CEQA findings, were violations of CEQA and unsupported by the record. For the reasons set forth in CREED LA's prior comments and concurrent VTTM/EIR appeal, the City Council should vacate these Commission actions.

**2) The Commission's Reliance on CEQA's Subsequent Review Standards to Support CEQA Findings for Initial Project Approval Violated CEQA**

In conjunction with its initial approval of the Project's Master Conditional Use Permit, Site Plan Review, modified Conditions of Approval, Density Bonus, and Amended Findings, and its approval recommendations regarding the General Plan Amendment and Vesting Zone and Height District Changes, the Commission adopted findings that the Project is not subject to further CEQA review under CEQA's subsequent review standards, CEQA Guidelines sections 15162, 15163, and 15164.<sup>10</sup> Specifically, the Commission found that the Project was "assessed in the previously certified EIR" as "certified" by the Advisory Agency.<sup>11</sup> The Commission's findings are invalid as a matter of law because CEQA's subsequent review standards do not apply to initial approval of a Project.

California courts have firmly established that "environmental review is not supposed to be segregated from project approval."<sup>12</sup> The Court of Appeal recently clarified that there is "nothing in the text of [CEQA] or common law interpreting [CEQA]" suggesting that a project's impact analysis or mitigation may be divided across different types of environmental review such that some impacts are analyzed in a an EIR and others are analyzed in an addendum or another different CEQA document.<sup>13</sup> CEQA's subsequent review standards apply to subsequent modifications to projects which were previously approved and for which an EIR was previously certified or an MND/Negative Declaration previously adopted.<sup>14</sup> These legal standards do not apply to projects which have not yet received their initial entitlement approvals, as is the case here.

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<sup>10</sup> 12/2/21 LOD, p. 1.

<sup>11</sup> 12/2/21 LOD, pp. F-47 to F-48.

<sup>12</sup> *California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325, 1341.

<sup>13</sup> *Farmland Protection Alliance v. County of Yolo* (Cal. Ct. App., Nov. 3, 2021, No. C087688) 2021 WL 5103355, at \*5.

<sup>14</sup> Pub. Resources Code, § 21166; CEQA Guidelines Sections 15162-15164.

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The Advisory Agency certified the Final EIR on September 16, 2021 in conjunction with approval of only one of the Project's entitlements, the Vesting Tentative Tract Map. The Project's remaining entitlements were not approved until the Commission approved them at the October 28, 2021 hearing (Master Conditional Use Permit, Site Plan Review, modified Conditions of Approval, Density Bonus, and Amended Findings), or are still pending final approval by the City Council based on the Commission's approval recommendations (General Plan amendment and Vesting Zone and Height District changes). The Project is therefore still undergoing its initial approval process. The Advisory Agency's EIR "certification" was therefore premature and in violation of CEQA, and does not trigger CEQA's subsequent review standards for the Project's remaining entitlements.

In order to certify an EIR, CEQA requires that the lead agency determine whether the EIR fully and accurately describes a specific development project that is "proposed to be carried out or approved by [the agency],"<sup>15</sup> then make a mandatory finding that the EIR has been "completed in compliance with CEQA."<sup>16</sup> The Advisory Agency lacked the legal capacity to make those determinations because the Project's future, scope, and the extent of its entitlements and its environmental impacts remained uncertain at the time the Advisory Agency conducted its hearing on the Project. The Advisory Agency also lacks decision-making authority under the LAMC for the majority of the Project's entitlements, and therefore lacked capacity to certify the EIR for the Project as a whole.

CEQA mandates that agencies refrain from certifying and adopting an EIR prior to full consideration of all aspects of a project.<sup>17</sup> The Advisory Agency's actions in certifying the Final EIR before the majority of the Project's entitlements had been considered by the Commission or City Council was a clear violation of CEQA, which "skirt[red] the purpose of CEQA by segregating environmental review of the EIR from the project approval."<sup>18</sup>

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<sup>15</sup> PRC § 21080(a).

<sup>16</sup> 14 CCR § 15090(a)(1).

<sup>17</sup> See, e.g., *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 963; *Coalition for an Equitable Westlake/MacArthur Park v. City of Los Angeles* (2020) 47 Cal.App.5th 368, 379; *Stockton Citizens for Sensible Planning v. City of Stockton*, 48 Cal. 4th 481, 489; *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 418-25.

<sup>18</sup> *California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325, 1341.  
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The Commission denied CREED LA's subsequent appeal of the Advisory Agency's EIR certification. The denial was an abuse of discretion, and was inconsistent with the determination by the courts that environmental review and approval of a project cannot be separated in a bifurcation of proceedings. As the courts have explained, "[a] decision on both matters must be made by the same decision-making body because '... CEQA is violated when the authority to approve or disapprove the project is separated from the responsibility to complete the environmental review.'"<sup>19</sup> The Commission's ensuing application of CEQA's subsequent review standards to its consideration of the Project's remaining entitlements was equally improper because the Project has not received final approval from the City and the Advisory Agency's EIR certification was facially invalid.

The City Council should uphold this appeal, vacate the Advisory Agency's certification of the Final EIR and approval of the MMRP, and vacate the Commission's CEQA findings regarding supplemental and subsequent CEQA review for the Project.

**B. The Commission's Findings that the Project is Consistent with the General Plan Were Not Supported by Substantial Evidence**

The Project proposes a General Plan amendment to the Central City North Community Plan ("Community Plan") to change the Project site's land use designation from Heavy Industrial to Regional Commercial.

The Community Plan is part of the Land Use Element of the City's General Plan and is intended to "promote an arrangement of land uses, streets and services which will encourage and contribute to the health, safety, welfare and convenience of the people who live and work in the community."<sup>20</sup> The Community Plan also guides development in order to create a healthful and pleasant environment and to coordinate development that is beneficial and desirable to the residents of the community.<sup>21</sup>

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<sup>19</sup> *Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340, 360, citing *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 731.

<sup>20</sup> Community Plan, pp. II-1–2.

<sup>21</sup> *Id.*

Prior to approving the proposed amendment, the City must support its decision with findings that the Project is consistent with the General Plan. A finding that a particular project is consistent with the general plan requires the project to be “compatible with the objectives, policies, general land uses, and programs specified in such a plan.”<sup>22</sup> This includes the Community Plan’s area-specific objectives, policies and programs, as part of the General Plan’s Land Use Element.

The Commission, however, in recommending approval of the General Plan Amendment, failed to provide substantial evidence to support its findings that the Project is consistent with the General Plan’s environmental and public health provisions. Therefore, the City must reject the Planning Commission’s recommendation to adopt the proposed General Plan amendment until the EIR is revised and its inconsistencies with the General Plan corrected.

**1) The Project Is Not Consistent with the Environmental Provisions of the General Plan**

The Project is inconsistent with the environmental provisions of the General Plan found in the Air Quality, Land Use, Noise, and Health Elements because the Project will result in numerous significant adverse impacts that the City has failed to adequately mitigate, as explained more fully below and in the attached exhibits.

*i. Air Quality*

The Air Quality Element of the General Plan sets forth specific goals, objectives and policies for the improvement of air quality throughout the Los Angeles region. Specifically, the following provisions of the Air Quality Element are relevant to this Project:

Goal 1 – Good air quality and mobility in an environment of continued population growth and healthy economic structure. [...]

Objective 1.3 – It is the objective of the City of Los Angeles to reduce particulate air pollutants emanating from unpaved areas, parking lots, and construction sites. [...]

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<sup>22</sup> Cal. Gov. Code § 65860(a)(2).  
L4986-015acp

Policy 1.3.1 – Minimize particulate emissions from construction sites.  
[...].<sup>23</sup>

As explained in our prior comments, as well as those of air quality expert Dr. Clark, the EIR failed to properly analyze and mitigate the Project's air quality impacts from construction and operational emissions, particularly its emissions of diesel particulate matter ("DPM"), a TAC. Though it provided calculated estimates of daily Project PM<sub>2.5</sub> emissions, the EIR omitted any analysis or discussion of the resulting impacts to air quality. Using these emissions estimates, Dr. Clark prepared his own screening assessment of impacts to the surrounding community from exposure to DPM. The Project, Dr. Clark concluded, will result in significant and unmitigated air quality and public health impacts from DPM and other construction and operational emissions, further establishing the Project's inconsistency with the General Plan.

In addition, the EIR failed to properly analyze cumulatively considerable impacts to air quality. Though the EIR follows the guidance of the South Coast Air Quality Management District ("SCAQMD") for determining cumulative impacts to air quality, the Commission failed to address the fact that this approach has been rejected by the courts and is inconsistent with CEQA's requirement that a project mitigate impacts that are "cumulatively considerable."<sup>24</sup>

The Commission staff report incorrectly asserted that CREED LA provided "no evidence that the combined emissions from three related projects would have any significant cumulative effect on regional air quality."<sup>25</sup> Dr. Clark's prior comments, in fact, explained that the Project is located less than 2 blocks away from 2 larger projects, the 670 Mesquit Project and the 6AM Project, both of which will emit potentially significant emissions during construction and operation, just like the Project.<sup>26</sup> Dr. Clark also identified at least 2 dozen other projects in the immediate vicinity of the Project site that were not considered by the Commission in its analysis of the cumulative impacts of nearby projects.<sup>27</sup> CREED LA provided the Commission with substantial evidence demonstrating that extensive concurrent, cumulative development projects in the immediate vicinity of the

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<sup>23</sup> General Plan, Air Quality Element, p. IV-1 to IV-2.

<sup>24</sup> PRC § 21083(b)(2); 14 CCR § 15130; *Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 721.

<sup>25</sup> Planning Commission Staff Report, p. A-4.

<sup>26</sup> 8/23/21 Clark Comments, p. 4.

<sup>27</sup> 1/25/21 Clark Comments, pp. 6-7.

Project site, regardless of each project’s individually incremental impact, will inevitably lead to cumulatively considerable impacts.<sup>28</sup> The Commission ignored this substantial evidence in recommending approval of the General Plan amendment.

*ii. Public Health*

Policy 5.1 of the Plan for a Healthy Los Angeles, the Health Element of the General Plan, requires the City to: “Reduce air pollution from stationary and mobile sources; protect human health and welfare and promote improved respiratory health.”<sup>29</sup> Policy 5.1 recognizes that “[a]ir pollutants such as particulate matter, ozone, nitrogen oxides, and toxic air contaminants contribute to poor air quality and lead to health impacts such as lung cancer, cardiovascular disease, asthma, and other respiratory illnesses.”<sup>30</sup>

The EIR provided estimates of daily PM<sub>2.5</sub> emissions resulting from Project construction and operations, but did not analyze the impacts those emissions would have on surrounding receptors and the local community. The Commission therefore lacked substantial evidence to support the finding that the Project would not result in unmitigated adverse public health impacts.<sup>31</sup> Using the EIR’s emissions estimates and the Bay Area Air Quality Management District’s (“BAAQMD”) Health Risk Calculator, Dr. Clark prepared his own screening assessment of the risks to public health due to exposure to TACs from Project emissions.<sup>32</sup> The results, he found, showed significant cancer risks from PM<sub>2.5</sub> exhaust well in excess of BAAQMD’s thresholds of significance, without adequate mitigation.<sup>33</sup>

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<sup>28</sup> The Commission staff report, meanwhile, relied on the unsupported assertion that, because the Project’s individual emissions will not exceed SCAQMD thresholds, its impacts will not be cumulatively considerable. The Commission’s conclusion ignored long-settled court opinions that “environmental damage often occurs incrementally from a variety of small sources ... [which] ... appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.” *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.

<sup>29</sup> General Plan, Health Element, Plan for a Healthy Los Angeles, p. 88; see also Policy 5.4 (Noxious Activities), p. 91.

<sup>30</sup> *Id.*

<sup>31</sup> *Sierra Club*, 6 Cal.5th at 518–522.

<sup>32</sup> 1/25/21 Clark Comments, p. 7.

<sup>33</sup> 1/25/21 Clark Comments, pp. 7–8; Dr. Clark explains that because SCAQMD does not provide specific emission thresholds based on emission rates or concentrations for TACs, he compared his results against the thresholds established by BAAQMD.

The Commission's conclusion that the Project will not result in significant emissions of TACs was not supported by substantial evidence, as the City failed to prepare a health risk analysis of impacts to health from exposure to Project emissions. An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>34</sup> Dr. Clark's evidence, meanwhile, demonstrates the Project's inconsistency with the General Plan's Health Element and its objectives of protecting human health and welfare by reducing air pollution from stationary and mobile sources.

*iii. Noise*

The Noise Element of the General Plan sets forth specific goals, objectives and policies related to noise management, including the reduction or elimination of noise associated with land use development projects within the City. The following provisions of the Noise Element are relevant to this Project:

Goal: A city where noise does not reduce the quality of urban life.

Objective 2 (Nonairport): Reduce or eliminate nonairport related intrusive noise, especially relative to noise sensitive uses.

Policy 2.2: Enforce and/or implement applicable city, state and federal regulations intended to mitigate proposed noise producing activities, reduce intrusive noise and alleviate noise that is deemed a public nuisance.

Objective 3 (Land Use Development): Reduce or eliminate noise impacts associated with proposed development of land and changes in land use.

Policy 3.1: Develop land use policies and programs that will reduce or eliminate potential and existing noise impacts.<sup>35</sup>

Additionally, Policy 5.4 (Noxious Activities) of the Health Element requires the City to: "Protect communities' health and well-being from exposure to noxious activities...that emit odors, noise, toxic, hazardous, or contaminant substances, materials, vapors, and others."<sup>36</sup>

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<sup>34</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732.

<sup>35</sup> General Plan, Noise Element, p. 3-1.

<sup>36</sup> General Plan, Health Element, p. 91 (emphasis added).



As explained in our October 26, 2021 Comments, the EIR's contention that noise impacts from the Project's rerouted haul truck route would not be significant was not supported by substantial evidence and was based on erroneous baseline measurements.<sup>37</sup> Baseline ambient noise levels at the Amp Lofts, which is located along the rerouted haul truck route, were measured during the course of construction of the Amp Lofts Building, in July 2017.<sup>38</sup> The primary sources of noise measured at the time are listed in Table IV.H-7 of the DEIR as "[t]raffic and hauling activity (i.e. increased number of haul trucks traveling around Project Site) along Imperial Street."<sup>39</sup> The baseline levels, therefore, do not represent typical ambient noise levels at the site, but rather the greatly increased noise levels associated with construction activity. Therefore, noise impacts resulting from Project construction, when compared to the EIR's falsely inflated baseline levels, were considerably underestimated, and remain unmitigated.

Furthermore, development of the site will not result in reduced noise impacts, as required by Objective 3 and Policy 3.1. The Project site is currently developed with one industrial warehouse occupied by two tenants, whose uses of the property involve only storage and office work. CREED LA's expert concluded that the Project, which will involve construction of a mixed-use building with up to 185 live/work units, open space for residents, art-production and commercial space and would include general commercial, restaurant, retail, office, and art production-related uses, would result in significant, unmitigated increases in noise levels from existing levels due to its development and changes in the site's land use.

The Project's construction and operational noise impacts, therefore, remain significant and unmitigated, in violation of General Plan Noise Element policies.

**C. The Commission Lacked Substantial Evidence to Support the Findings Required for the Vesting Zone Change and Height District Change**

For zone and height district changes, LAMC Section 12.32 F requires the City to make findings related to public necessity, convenience, general welfare and good zoning practice. The Commission's findings that the Project is consistent with public convenience and general welfare were unsupported, due to the City's failure to

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<sup>37</sup> Appeal Staff Report, p. A-9.

<sup>38</sup> See, e.g., <https://urbanize.city/la/post/arts-districts-amp-lofts-heads-towards-finish-line>.

<sup>39</sup> DEIR, IV.H Noise, p. IV.H-17.

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provide adequate analysis or mitigation of the Project's potentially significant impacts to air quality, noise, and public health.

Furthermore, the proposed zone change does not include provisions required by LAMC § 12.32 G.2 to ensure the prevention or mitigation of potentially adverse environmental effects caused by the Project. The LAMC provides that limitations on a proposed zone change should be included where necessary to achieve project consistency with the General Plan and to protect the surrounding environment from harm resulting from the proposed zone change.<sup>40</sup> The Commission failed to require necessary limitations for the Project. The only provisions included in the LOD's recommended zone change are (1) a limitation on site development requiring that the Project be in substantial conformance with the plans submitted with the application on October 15, 2021; (2) a requirement that the owner execute a covenant satisfying affordable housing requirements; and (3) a provision requiring construction of a 3,500-square-foot publicly accessible, landscaped pedestrian paseo providing public access from Mateo Street to Imperial Street. The Commission failed to require any restrictions or limitations on development that would mitigate the Project's significant adverse impacts to the environment and public health. As such, the Commission failed to satisfy the Municipal Code requirement that the Planning Commission determine the Project to be compatible with public necessity, convenience and general welfare before the City can approve the proposed Vesting Zone and Height District Changes.

**D. The Commission Lacked Substantial Evidence to Support the Findings Required for Approval of the Master Conditional Use Permit**

The Commission approved a Master Conditional Use Permit ("MCUP") to allow for the sale and dispensing of a full line of alcoholic beverages for on-site consumption for up to 4 establishments, for a total of up to 15,005 square feet of floor area. Before issuing the MCUP, LAMC Sections 12.24 E and W required the Commission to make findings related to the public health and welfare, which, as discussed below, the Commission failed to do. Therefore, the City Council should vacate the Commission's approval of the MCUP.

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<sup>40</sup> LAMC § 12.32 G.2(b).  
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**1) The Commission Lacked Substantial Evidence to Support the Findings Required by LAMC Section 12.24 E.2**

Section 12.24 E.2 of the LAMC requires that a decision-making body, before approving a conditional use permit, must first find “that the project’s location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety.”<sup>41</sup> The City has not adequately analyzed, disclosed, or mitigated the Project’s potentially significant impacts to air quality, noise and public health from construction and operational activities. The Commission therefore lacked substantial evidence to support the mandatory findings required to approve the MCUP.

As explained above and in CREED LA’s comments on the Draft and Final EIRs, the EIR’s failure to properly consider the Project’s impacts with the impacts of similar projects nearby prevented an adequate assessment of cumulative impacts to air quality from emissions of GHGs and other pollutants, leaving air quality impacts unmitigated. The EIR’s use of erroneous baseline measurements of ambient noise levels leads to inaccurate and grossly underestimated impacts from construction noise along the rerouted haul truck route, leaving noise impacts unmitigated. Finally, the EIR’s failure to adequately analyze impacts to public health from exposure to TACs during Project construction and operation leaves nearby sensitive receptors vulnerable to significant health risks without any mitigation of these adverse impacts. By contrast, Dr. Clark’s prior comments demonstrate, with the support of substantial evidence, that the Project, as approved by the Commission, is likely to result in significant, unmitigated risks to the public health of nearby receptors, as well as to air quality from cumulative impacts.

The Commission, therefore, lacked substantial evidence to support the required findings that the Project will not adversely affect public health or welfare and cannot approve the MCUP.

**2) The Commission Lacked Substantial Evidence to Support the Findings Required by LAMC Section 12.24 E.3**

Section 12.24 E.3 required the Commission to find “that the project substantially conforms with the purpose, intent and provisions of the General Plan,

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<sup>41</sup> LAMC § 12.24 E.2.  
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the applicable community plan, and any applicable specific plan.”<sup>42</sup> As discussed above, the Commission lacked substantial evidence to support its findings that the Project is consistent with the General Plan’s Air Quality, Land Use, Noise and Health elements. The City Council should set aside the Commission’s approval of the MCUP due to its failure to provide substantial evidence to support these consistency findings.

**3) The Commission Lacked Substantial Evidence to Support the Findings Required by LAMC Section 12.24 W.1(a)(1)**

Similarly to section E.2, section 12.24 W.1(a)(1) required that the Commission find “that the proposed **use** will not adversely affect the welfare of the pertinent community” and that it “will not detrimentally affect nearby residentially zoned communities in the area of the City involved, after giving consideration to the distance of the proposed use from residential buildings, churches, schools, hospitals, public playgrounds and other similar uses, and other establishments dispensing, for sale or other consideration, alcoholic beverages, including beer and wine.”<sup>43</sup>

The LOD states that the Commission found that approval of a permit for the sale of a full line of alcoholic beverages “would enhance the dining and entertainment experience for visitors, employees, and residents in the vicinity.”<sup>44</sup> The basis for these findings was that the MCUP includes conditions applicable to all tenants and venues, such as security measures, restrictions on lighting and noise, and prohibitions on loitering, and that operational noise that is under the control of individual tenants “shall be in compliance with the Citywide Noise Ordinance.”<sup>45</sup>

The Commission’s conclusions are not supported by substantial evidence. Rather than providing substantial evidence in support of a finding that the use approved by the MCUP—the sale of alcoholic beverages—will not adversely affect the welfare of the community, the Commission’s reasoning instead attempted to excuse significant noise impacts based on the Project’s compliance with a set noise threshold, ignoring impacts that may be highly significant even while remaining below noise ordinance thresholds. It has long been settled that “a project’s effects can be significant even if they are *not* greater than those deemed acceptable” by

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<sup>42</sup> LAMC § 12.24 E.3.

<sup>43</sup> LAMC § 12.24 W.1(a)(1).

<sup>44</sup> LOD, Case No. CPC-2016-3689-GPA-ZC-HD-MCUP-DB-SPR, p. F-34.

<sup>45</sup> *Id.*

regulation or ordinance.<sup>46</sup> CEQA Guidelines Appendix G also requires that an agency consider “whether the project would result in ‘[a] substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.’”<sup>47</sup> Noise levels can therefore be significant if they represent a substantial increase over existing baseline levels, even where both existing and increased levels do not exceed adopted thresholds. The Commission failed to point to any evidence in the record demonstrating that the Project’s operational noise levels would be less than significant under this standard.

A determination that noise impacts do not exceed thresholds of significance is not commensurate with a finding that noise impacts resulting from a permitted land use will not adversely affect the welfare of the community. The courts have repeatedly found that, if a project results in substantial increases in ambient noise levels in the project vicinity above existing noise levels without the project, the project has significant, adverse noise impacts.<sup>48</sup> The LOD asserts that “the surrounding neighborhood contains similar mixed-use buildings that provide commercial uses which serve alcohol on-site, therefore the introduction of another such establishment would not create an adverse or unique condition.” However, this conclusion does not address the legal standard of whether the Project’s addition of a new alcohol use will result in a significant increase in ambient noise levels in conjunction with these existing uses, and the LOD and EIR lack a quantitative analysis to support the assertion. Moreover, the Project site is currently developed only with an industrial warehouse occupied by two tenants, whose uses of the property involve only storage and office work. Adding alcohol-related uses to the Project site is likely to increase ambient noise levels at the Project site, as compared to the noise levels currently generated by storage and office activities. There is no evidence in the record demonstrating that the Project will not result in substantial increases over ambient noise levels. The Commission therefore failed to establish that this use of the Project site will not adversely affect the community’s welfare, and lacked substantial evidence to approve the MCUP.

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<sup>46</sup> *Keep our Mountains Quiet v. Santa Clara* (2015) 236 Cal.App.4th 714, 733, quoting *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354.

<sup>47</sup> CEQA Guidelines, Appendix G, § XII, subd. (d); *Keep our Mountains Quiet v. Santa Clara* (2015) 236 Cal.App.4th 714, 733.

<sup>48</sup> See *Keep our Mountains Quiet v. Santa Clara* (2015) 236 Cal.App.4th 714, 733; *CBE v. CRA* (2002) 103 Cal.App.4th 98, 115-16; *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 893, as modified on denial of reh’g (Mar. 20, 2020).

**E. The Commission Lacked Substantial Evidence to Support the Findings Required for Approval of the Site Plan Review**

Under LAMC Section 16.05 F, the Commission was required to make specific findings before it approved the Project's Site Plan Review, including "that the project is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any applicable specific plan."<sup>49</sup> As discussed above, the Commission lacked substantial evidence to support its findings that the Project is consistent with the General Plan's Air Quality, Noise, Land Use, and Health elements. The Commission therefore also lacked substantial evidence to make the findings required under Section 16.05 F to approve the Project's Site Plan Review.

**II. CONCLUSION**

CREED LA respectfully requests that the City Council set a hearing on this appeal concurrently with our previously filed appeal of approval of the VTTM and EIR certification. The specific issues raised, and evidence provided, in support of this appeal are set forth in CREED LA's prior comment letters and in the VTTM/EIR appeal.

We respectfully request that the Council consider all issues and evidence presented by CREED LA, vacate all actions taken by the City Planning Commission regarding Project entitlements, and direct City staff to correct the EIR's errors and inadequacies raised herein. A revised EIR should be recirculated for public review and comment before the Council or any other decision-making body of the City considers the Project for approval.

Sincerely,



Kendra Hartmann

KDH:acp

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<sup>49</sup> LAMC § 16.05 F.  
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# **EXHIBIT 1**

# ADAMS BROADWELL JOSEPH & CARDOZO

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January 25, 2021

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**Re: Preliminary Comments on the Draft Environmental Impact Report – 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV-2016-3691-EIR)**

Dear Ms. Afshar and Mr. Bertoni:

We are writing on behalf of Coalition for Responsible Equitable Economic Development (“CREED LA”) to provide these preliminary comments on the Draft Environmental Impact Report (“DEIR”) prepared for the 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV 2016-3691-EIR) (“Project”), proposed by District Centre, LP, & District Centre-GPA, LP (collectively, “Applicant”). The Project proposes the demolition of the existing warehouse and surface parking lot, and the construction of an up-to 197,355-square-foot mixed-use building, including up to 185 live/work units, approximately 15,320 square feet of open space for residents, up to 23,380 square feet of art-production and commercial space, and associated parking facilities. The Project site is located at 668-678 S. Mateo Street and 669-679 S. Imperial Street in the Central City North community of the City of Los Angeles, and consists of eight contiguous lots associated with Assessor Parcel Number 5164-020-021.

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This letter contains the preliminary comments of CREED LA and its technical consultants based on an initial review of the DEIR. As discussed below, the City failed to provide CREED LA with timely access to the DEIR reference documents, as required by the California Environmental Quality Act<sup>1</sup> (“CEQA”). The City also declined CREED LA’s January 20, 2021 request to extend the formal public comment period to allow additional time for the public to review DEIR reference documents that were provided just days before the end of the DEIR’s current public comment period.<sup>2</sup> Due to the limited time provided for public comment, and CREED LA’s limited access to documents underlying the DEIR’s analysis, we have not had adequate time to fully review and comment on the DEIR. We reserve the right to supplement supplemental comments on the DEIR by February 8, 2021, and at any and all later proceedings related to this Project.<sup>3</sup>

Based on our initial review, it is clear that the DEIR fails to comply with CEQA<sup>4</sup> in several respects. As explained more fully below, the DEIR fails to accurately disclose the extent of the Project’s potentially significant impacts on air quality, greenhouse gases (“GHG”), public health, and noise; fails to support its findings with substantial evidence; and fails to properly mitigate the Project’s potentially significant impacts. The City cannot approve the Project until the errors in the DEIR are remedied and a revised DEIR is circulated for public review and comment.

We reviewed the DEIR and its appendices with the assistance of highly qualified technical consultants, including air quality consultant James Clark,

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<sup>1</sup> Pub. Resources Code (“PRC”) §§ 21000 et seq.; 14 Cal. Code Regs. (“CCR”) §§ 15000 et seq.; PRC § 21092(b)(1); 14 CCR § 15087(c)(5).

<sup>2</sup> The City has provided CREED LA an informal extension to February 8, 2021 to submit its DEIR comments, but declined to extend the existing CEQA public comment period, which ends on January 25, 2021.

<sup>3</sup> Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield (“Bakersfield”)* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

<sup>4</sup> Pub. Resources Code (“PRC”) §§ 21000 et seq.; 14 Cal. Code Regs. (“CCR”) §§ 15000 et seq. L4986-005acp

Ph.D.<sup>5</sup> and acoustics expert Neil A. Shaw, FASA, FAES.<sup>6</sup> The attached expert comments require separate responses under CEQA.<sup>7</sup>

## I. STATEMENT OF INTEREST

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. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Los Angeles.

Individual members of CREED LA and its member organizations include John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias. These individuals live, work, recreate, and raise their families in the City of Los Angeles and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

In addition, CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

## II. LEGAL BACKGROUND

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<sup>5</sup> Mr. Clark's technical comments and curriculum vitae are attached hereto as **Exhibit A** (hereinafter Clark Comments).

<sup>6</sup> Mr. Shaw's technical comments and curriculum vitae are attached hereto as **Exhibit B** (hereinafter Shaw Comments).

<sup>7</sup> 14 CCR § 15088(a), (c).  
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CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report (“EIR”) (except in certain limited circumstances).<sup>8</sup> The EIR is the very heart of CEQA.<sup>9</sup> “The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”<sup>10</sup>

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.<sup>11</sup> “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”<sup>12</sup> The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”<sup>13</sup>

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.<sup>14</sup> The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”<sup>15</sup> If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”<sup>16</sup>

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a

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<sup>8</sup> See, e.g., PRC § 21100.

<sup>9</sup> *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

<sup>10</sup> *Comtys. for a Better Env’ v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 (“*CBE v. CRA*”).

<sup>11</sup> 14 CCR § 15002(a)(1).

<sup>12</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

<sup>13</sup> *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>14</sup> 14 CCR§ 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

<sup>15</sup> 14 CCR §15002(a)(2).

<sup>16</sup> PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

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project proponent in support of its position. *A clearly inadequate or unsupported study is entitled to no judicial deference.*<sup>17</sup> As the courts have explained, “a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.”<sup>18</sup> “The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail ‘to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”<sup>19</sup>

### **III. THE CITY FAILED TO PROVIDE TIMELY ACCESS TO DOCUMENTS REFERENCED AND INCORPORATED BY REFERENCE IN THE DEIR**

The City violated CEQA and improperly truncated the DEIR public comment period by failing to make all documents referenced or relied on in the DEIR available for public review during the Project’s public comment period.<sup>20</sup> As a result, CREED LA was unable to complete its review and analysis of the DEIR and its supporting evidence during the current public comment period, which ends on January 25. Our request that the City extend the public comment period was denied. We therefore provide these initial comments on the DEIR and reserve our right to submit supplemental comments on the DEIR at a future date.

Access to all of the documents referenced in the DEIR is necessary to conduct a meaningful review of its analyses, conclusions, and mitigation measures and to assess the Project’s potential environmental impacts. CEQA requires that “all documents referenced” and “incorporated by reference” in the draft environmental impact report be available for review and “*readily accessible*” during the entire comment period.<sup>21</sup> The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the review and comment period invalidates the

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<sup>17</sup> *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12.

<sup>18</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

<sup>19</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, quoting *Laurel Heights*, 47 Cal.3d at 405.

<sup>20</sup> See PRC § 21092(b)(1); 14 CCR § 15087(c)(5).

<sup>21</sup> PRC § 21092(b)(1) (emphasis added); 14 CCR § 15087(c)(5).

entire CEQA process, and that such a failure must be remedied by permitting additional public comment.<sup>22</sup> It is also well-settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.<sup>23</sup>

On December 22, 2020, we submitted a request for immediate access to documents referenced in the DEIR seeking “any and all documents referenced, incorporated by reference, and relied upon” by the City in its preparation of the DEIR.<sup>24</sup>

On January 6, 2021, we were told during a phone conversation with City staff that we could have access to two CDs containing all of the documents referenced in the DEIR and its appendices.<sup>25</sup> On January 13, 2021, we received the two CDs. The CDs, however, did not include any DEIR reference documents that we did not previously have access to.

On January 19, 2021, at the City’s request, we submitted a list of the missing DEIR reference documents to the City.<sup>26</sup> In response, the City informed us that our January 19, 2021 list was considered a new request pursuant to the California Public Records Act (“PRA”), a misunderstanding on the City’s part.<sup>27</sup> We responded by clarifying that our January 19 email was a follow up to CREED LA’s original December 22, 2020 DEIR reference document request made pursuant to CEQA.<sup>28</sup>

On January 21, 2021, we received an email from the City providing partial access to the missing documents. The email indicated that access to the remainder

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<sup>22</sup> See *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

<sup>23</sup> *Santiago County Water Dist. V. County of Orange* (1981) 118 Cal.App.3d 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

<sup>24</sup> Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”) to the City of Los Angeles re “Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report – 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV-2016-3691-EIR)” (Dec. 22, 2020).

<sup>25</sup> Personal communication between Kendra Hartmann and Jivar Afshar, January 19, 2021

<sup>26</sup> **Attachment A:** Email from ABJC to City re “676 Mateo Street Project - List of Missing DEIR Ref Docs” (Jan. 19, 2021).

<sup>27</sup> Email from City to ABJC re “676 Mateo Street Project - List of Missing DEIR Ref Docs” (Jan. 20, 2021).

<sup>28</sup> Email from ABJC to City re “676 Mateo Street Project – List of Missing DEIR Docs” (Jan. 20, 2021).

of the documents would be provided “in the near future.”<sup>29</sup> In response to our reply email, which requested a response to our letter seeking an extension as well as clarification on when we could expect the remainder of the documents, the City responded on January 22, 2021 by providing access to the remainder of the DEIR reference documents, one business day before the close of the comment period.<sup>30</sup> Despite its late document production, the City declined CREED LA’s request to extend the public comment period. The City cited CEQA Guidelines Section 15105 as support for its denial, which states that “[t]he public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days *except in unusual circumstances*.”<sup>31</sup> The City’s inability to provide access to all of the DEIR reference documents during the DEIR’s public comment period constituted unusual circumstances warranting an extension.<sup>32</sup> The City ultimately agreed to provide CREED LA with an informal two-week extension to February 8, 2021 to provide comments on the DEIR, but did not extend the comment period.<sup>33</sup>

CEQA requires that all documents referenced, incorporated by reference, and relied upon in a DEIR be readily available to the public during the entire CEQA public comment period. Despite CREED LA’s month-long efforts to obtain “immediate access” to all materials referenced in the DEIR, the City granted access these materials in an untimely, piecemeal fashion over a period of more than 30 days, then declined to extend the public comment period. The City’s actions flout CEQA’s disclosure requirements.<sup>34</sup> By failing to make all documents referenced and incorporated by reference in the DEIR “readily accessible” to the public during the entire comment period, the City violated the clear procedural mandates of CEQA, to the prejudice of CREED LA and other members of the public.

#### IV. THE DEIR FAILS TO ADEQUATELY DESCRIBE THE PROJECT

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<sup>29</sup> **Attachment B:** Email from City to ABJC re “676 Mateo Street Project - List of Missing DEIR Ref Docs” (Jan. 21, 2021).

<sup>30</sup> **Attachment C:** Email from City to ABJC re “676 Mateo Street Project - List of Missing DEIR Ref Docs” (Jan. 22, 2021).

<sup>31</sup> 14 C.C.R. § 15105(a) (emphasis added).

<sup>32</sup> See *Ultramar*, 17 Cal.App.4th at 699.

<sup>33</sup> Email from City to ABJC re “676 Mateo Street Project - List of Missing DEIR Ref Docs” (Jan. 22, 2021).

<sup>34</sup> *Id.*; Gov. Code § 6253(a) (requires public records to be “open to inspection at all times during the office hours of the state or local agency” and provides that “every person has a right to inspect any public record.”).

The DEIR does not meet CEQA requirements because it fails to include a complete and accurate project description, rendering the entire impact analysis unreliable. An accurate and complete project description is necessary to perform an evaluation of the potential environmental effects of a proposed project.<sup>35</sup> Without a complete project description, the environmental analysis will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.<sup>36</sup> The courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document].”<sup>37</sup> “Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal's benefit against its environmental costs.”<sup>38</sup>

CEQA Guidelines Section 15378 defines “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”<sup>39</sup> “The term ‘project’ refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval.”<sup>40</sup> Courts have explained that for a project description to be complete, it must address not only the immediate environmental consequences of going forward with the project, but also all “*reasonably foreseeable* consequence[s] of the initial project.”<sup>41</sup> Accordingly, CEQA requires that the project description contain a brief statement of the intended uses of an EIR, including a list of agencies which will use the EIR, along with the permits and approvals required for implementation of a proposed project.<sup>42</sup>

#### **A. The DEIR Fails to Adequately Describe the Project's Activities that May Result in Significant Noise Impacts**

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<sup>35</sup> See, e.g., *Laurel Heights*, 47 Cal.3d 376.

<sup>36</sup> See *ibid.*

<sup>37</sup> *County of Inyo*, 71 Cal.App.3d at p. 193.

<sup>38</sup> *Id.* at 192-193.

<sup>39</sup> CEQA Guidelines § 15378.

<sup>40</sup> *Id.* § 15378(c).

<sup>41</sup> *Laurel Heights*, 47 Cal.3d at p. 396 (emphasis added); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-50.

<sup>42</sup> CEQA Guidelines § 15124(d).

The DEIR fails to adequately describe the Project's specifics regarding construction activities, particularly as relates to the approximately 74,500 cubic yards of soil that the City anticipates will be hauled off the Project site. No description is provided of the location for the staging of the haul trucks or the size of the haul trucks to be used in the export of the soil. A description of the hours during which trucks will make haul trips and how many trips they will make per day is likewise absent from the DEIR. This information is crucial to determine the level of the noise the trucks will emit and the hours during which residents and neighbors will be affected.

Furthermore, though the DEIR's Project Description section states that requests for permits for the sale and consumption of alcohol on the premises are anticipated, descriptions of the accompanying activities, such as live or recorded music, are not included in the DEIR.<sup>43</sup> As Mr. Shaw explains, noise from boisterous patrons and music being played at the rooftop pool area and businesses will likely have an impact on the residences to the west of the Project site, and could impact homes' interiors since windows do not have good low-frequency attenuation.<sup>44</sup> The resulting noise from these activities may require mitigation to reduce adverse impacts to neighboring residents. The DEIR fails to disclose whether the Project anticipates the use of sound systems, alcohol use in the pool area, and other sources of significant noise impacts, thus failing to disclose a potentially significant operational noise impact.<sup>45</sup>

The DEIR's failure to adequately describe the operational components of the Project renders the analysis that follows incomplete and underestimates the impacts the Project is likely to have on the ambient environment and surrounding residences. Mitigation measures, such as retrofitting windows at impacted residential properties, may be necessary to reduce these impacts, but are absent from the DEIR. The DEIR's conclusion that the Project will result in less than significant operational noise impacts, with no mitigation required, is not supported by substantial evidence.<sup>46</sup>

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<sup>43</sup> DEIR Section II. Project Description, p. II-40.

<sup>44</sup> Shaw Comments, p. 5.

<sup>45</sup> Shaw Comments, p. 1.

<sup>46</sup> See DEIR, Page IV.H-33.



## **V. THE DEIR FAILS TO ADEQUATELY ANALYZE, QUANTIFY, AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS**

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.<sup>47</sup> An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>48</sup>

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.<sup>49</sup> Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.<sup>50</sup> In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will 'determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements.'<sup>51</sup>

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'<sup>52</sup>

### **A. The DEIR Fails to Adequately Disclose and Mitigate the Project's Significant Noise Impacts**

The CEQA Guidelines require an EIR to consider "whether a project would result in...[g]eneration of a substantial temporary or periodic increase in ambient

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<sup>47</sup> 14 CCR § 15064(b).

<sup>48</sup> *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

<sup>49</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

<sup>50</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>51</sup> *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

<sup>52</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355.

noise levels in the vicinity of the project . . .”<sup>53</sup> The DEIR’s noise analysis fails to accurately disclose the Project’s noise impacts for several reasons.

*i. The DEIR’s Noise Analysis Contains Inadequate Baseline Data*

The DEIR’s Noise Report fails to accurately calculate the baseline ambient noise at the Project site. An accurate baseline is necessary to assess the significance of the Project’s two-year construction noise on sensitive receptors in the vicinity of the Project site.<sup>54</sup>

To establish ambient noise levels at the Project site, the DEIR relies on two, 15-minute, on-site noise measurements conducted on a single day: July 5, 2017. One measurement was west of the Project site, near the Toy Factory Lofts and National Biscuit Company residential sensitive receptors, while the other measurement was taken at the northeast corner of the Project site, near the Amp Factory Lofts.<sup>55</sup> The recorded noise levels at those site visits were 66.4 dBA L<sub>EQ</sub> and 69.3 dBA L<sub>EQ</sub>, respectively.<sup>56</sup> These isolated measurements are inadequate to establish existing ambient noise levels at all relevant areas in the vicinity of the Project site. Furthermore, as Mr. Shaw points out, the DEIR does not disclose environmental conditions present when the measurements were taken.<sup>57</sup> Certain conditions, such as the time of day the measurements were taken or the presence of other construction activities or wind, could result in significantly inconsistent acoustical values.<sup>58</sup> The DEIR’s failure to disclose these conditions, and its reliance on overly limited noise data, makes an accurate analysis of the DEIR’s conclusions of noise impacts impossible.

*ii. The DEIR Underestimates and Inadequately Mitigates the Project’s Noise Impacts*

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<sup>53</sup> CEQA Guidelines, Appendix G, Sec. XII(d).

<sup>54</sup> 14 CCR § 15125; *Comtys. For A Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 328 (accurate description of the affected environment is essential because it establishes the baseline physical conditions against which a lead agency can then determine whether an impact is significant); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 952; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App 4th 1109, 1121-22

<sup>55</sup> DEIR Section IV.H Noise, p. IV.H-17.

<sup>56</sup> *Id.*

<sup>57</sup> Shaw Comments, p. 1.

<sup>58</sup> *Id.*

CEQA does not set a numeric threshold for determining the significance of ambient noise increases. Lead agencies may select their own thresholds. The agency's selection of a threshold of significance must be supported by substantial evidence.<sup>59</sup> As explained by Mr. Shaw in his comments, the threshold chosen to determine whether the Project's noise impacts will be significant does not consider the actual distance of the Project's construction activities to nearby sensitive receptors.<sup>60</sup> In addition, the DEIR fails to address potentially significant noise impacts from the Project's construction activities, both underestimating some impacts and failing to disclose others.

Moreover, the DEIR underestimates the noise levels from construction activities, such as the distance of trucks hauling soil and other construction debris from sensitive receptors near the Project site and the number of trips those trucks will make to and from the site.<sup>61</sup> Table IV.H-8, which estimates the noise range of Project construction equipment, measures the sound levels at 50 feet from the noise source. As Mr. Shaw clarifies, however, the actual distance of haul trucks making incoming trips to the Project is 30 feet from the closest sensitive receptors—the Biscuit Company and Toy Factory lofts—while the outgoing route of the trucks is only 15 feet from the Biscuit Company Lofts.<sup>62</sup> The DEIR's noise measurements were therefore conducted using inaccurate and unsupported distances. When accurate distances are used, noise levels increase by 4.4 dBA and 10.4 dBA higher, respectively, over the levels cited in the DEIR. The DEIR therefore fails to accurately disclose the distance of sensitive receptors to the Project site, resulting in inadequate analyses of impacts on these receptors and incorrect conclusions about the nature and severity of the Project's impacts.

Furthermore, the DEIR states that “peak construction noise levels at all sensitive receptors would be below the 75 dBA construction noise threshold defined by the Section 41.40 of the [Los Angeles Municipal Code (“LAMC”).]”<sup>63</sup> As Mr. Shaw

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<sup>59</sup> 14 CCR § 15064(b); *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 884.

<sup>60</sup> DEIR Section IV.H Noise p. IV.H-13: “LAMC Section 112.05 sets a maximum noise level for construction equipment of 75 dBA at a distance of 50 feet when operated within 500 feet of a residential zone.” The closest sensitive receptors will be closer than 50 feet from the noise sources.

<sup>61</sup> Shaw Comments, p. 3.

<sup>62</sup> Shaw Comments, p. 2.

<sup>63</sup> DEIR Section IV.H Noise, p. IV.H-27.

explains, however, LAMC Section 41.40 includes no such threshold.<sup>64</sup> Regardless, based on the estimated 142 haul truck trips per day (71 inbound and 71 outbound) stated in the DEIR, Mr. Shaw calculates that noise levels will exceed any such threshold. Mr. Shaw's calculations demonstrate that 75 dBA will be exceeded every 6.4 minutes if the trucks are making haul trips for 15 hours a day (from, for example, 7 a.m. to 10 p.m.) or every 3.6 minutes if they are hauling for 10 hours a day (such as between the hours of 7 a.m. and 5 p.m.).<sup>65</sup> This is a significant noise impact which the DEIR fails to disclose.

The courts have held that compliance with regulations, including noise ordinances, is not an adequate significance threshold because it does not foreclose the possibility of significant impacts.<sup>66</sup> Similarly, here, compliance with any LAMC threshold does not assure that noise impacts will be less than significant. As Mr. Shaw states, "If the number of trips per day is greater than stated, noise impacts will be more frequent and could become almost continuous."<sup>67</sup>

Finally, though the DEIR includes in its mitigation measures the installation of an 8-foot barrier to be erected during demolition and excavation/grading activities,<sup>68</sup> the barrier will do nothing to combat the noise impacts to multi-story residential buildings on either side of the Project site.<sup>69</sup> The noise impacts to these receptors, both from construction and operation of the Project once completed, will be substantial.<sup>70</sup> The mitigation offered by the DEIR is wholly insufficient. This is a separate CEQA violation. The DEIR concludes that construction noise impacts are significant and unavoidable. Therefore, the DEIR must adopt all feasible mitigation measures to reduce construction noise impacts to the greatest extent feasible.<sup>71</sup>

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<sup>64</sup> Los Angeles Municipal Code, available at [https://codelibrary.amlegal.com/codes/los\\_angeles/latest/lamc/0-0-0-128777#JD\\_41.40](https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-128777#JD_41.40) (last accessed Jan. 20, 2021).

<sup>65</sup> Shaw Comments, p. 3.

<sup>66</sup> *Keep our Mountains Quiet v. Santa Clara* (2015) 236 Cal.App.4th 714, 733; *CBE v. CRA* (2002) 103 Cal.App.4th 98, 115-16; *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 893, as modified on denial of reh'g (Mar. 20, 2020)

<sup>67</sup> Shaw Comments, p. 4.

<sup>68</sup> MM NOI-1, DEIR Section IV.H Noise, p. IV.H-34.

<sup>69</sup> DEIR Section II. Project Description, p. II-1.

<sup>70</sup> Shaw Comments, p. 1.

<sup>71</sup> *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883. L4986-005acp

An additional, potentially feasible mitigation measure for this impact would be to include Plexiglass balcony barriers on the higher levels of the adjacent residential buildings. This is a measure that is often used on residential balconies which abut noisy roadways. Installation of heavy Plexiglass or other clear panels around the edges of the residential balconies would act as sound barriers without affecting residents' light or view. The DEIR should adopt the recommended mitigation measure or explain why, based on substantial evidence, the proposed measure is infeasible before it can consider approving the Project.<sup>72</sup>

## **B. The DEIR Fails to Adequately Disclose and Mitigate the Project's Significant Air Quality Impacts**

Under CEQA, a project has significant impacts if it “[v]iolate[s] any air quality standard or contribute[s] substantially to an existing or projected air quality violation.”<sup>73</sup> The South Coast Air Quality Management District (“SCAQMD” or “Air District”) maintains thresholds of significance for criteria air pollutants that are to be used in determining the significance of a project's air quality impacts under CEQA.<sup>74</sup> The DEIR failed to accurately analyze and mitigate the Project's construction emissions by using an unsupported qualitative threshold to analyze project emissions, by improperly concluding that GHG emissions are insignificant, by improperly disguising mitigation measures as Project design features, and by relying on ineffective mitigation which is unenforceable and speculative. Furthermore, the DEIR failed to evaluate the cancer risk impacts resulting from exposure to toxic diesel particulate matter (“DPM”) emissions generated during Project construction and operation. As a result, the DEIR's conclusions that the Project's air quality and health risk impacts from emissions generated during Project construction and operation will be less than significant are unsupported and inaccurate.

### **a. The DEIR Fails to Disclose and Analyze Air Quality Impacts from Construction and Operation**

#### *i. The DEIR's Analysis of GHG Emissions Relies on an Unsupported Threshold*

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<sup>72</sup> *Id.*

<sup>73</sup> CEQA Appendix G.

<sup>74</sup> See SCAQMD Thresholds, available at <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>.

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Under the CEQA Guidelines, a lead agency must analyze a project's impacts on GHG emissions.<sup>75</sup> The Guidelines allow for several approaches to this analysis, both qualitative and quantitative. The Guidelines explicitly mandate, however, that the "analysis should consider a timeframe that is appropriate for the project. The agency's analysis also must reasonably reflect evolving scientific knowledge and state regulatory schemes."<sup>76</sup> In determining the significance of GHG emissions impacts, the agency must consider the "extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions."<sup>77</sup>

The City has not adopted a numerical significance threshold for assessing impacts related to GHG emissions and has not formally adopted a local plan for reducing GHG emissions. The DEIR concludes that the Project's GHG impacts would be less than significant based on the Project's consistency with the goals and actions to reduce GHG emissions found in the City's Green New Deal, the Southern California Association of Governments 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy ("SCAG RTP/SCS"), and the 2008 California Climate Change Scoping Plan.<sup>78</sup>

Though the DEIR outlines a few ways in which the Project will comply with these plans, the majority of its strategies for assuring consistency are ambiguous at best, and are not supported by substantial evidence. Many of these strategies delegate to other agencies and departments the responsibility of determining compliance with the plans, while others make conclusory statements regarding the Project's compliance with particular strategies for reducing emissions without providing any support for these conclusions. For example, the DEIR asserts that the Project does not conflict with strategies that propose adopting vehicle efficiency measures in order to reduce GHG emissions included in the AB 32 Scoping Plan because it is required to comply with them.<sup>79</sup> Likewise, the DEIR claims that it will be required to comply with CARB's measures to reduce hydrofluorocarbon emissions, so it will therefore comply with the Scoping Plan's strategies to reduce emissions of gases with high global warming potential.<sup>80</sup> These—and several other

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<sup>75</sup> 14 CCR §15064.4.

<sup>76</sup> 14 CCR §15064.4(b)

<sup>77</sup> 14 C.C.R. § 15064.4(b)(3).

<sup>78</sup> DEIR Section IV.D Greenhouse Gases, p. IV.D-27.

<sup>79</sup> *Id.*, p. 45.

<sup>80</sup> *Id.*

claims made by the DEIR regarding its compliance with state and regional plans and policies—offer no meaningful analysis of how the Project would specifically comply with these strategies.

Additionally, the DEIR claims its consistency with the SCAG RTP/SCS supports the conclusion that the Project will not result in significant GHG emissions. Its analysis, however, consists of stating that the Project “would accommodate increases in population, households, employment, and travel demand,” and that because the Project site is located in close proximity to public transit stops, it would result in reduced vehicle-miles traveled (“VMT”), “as compared to a project of similar size and land uses at a location without close and walkable access to off-site destinations and public transit stops.”<sup>81</sup> The DEIR further asserts that the Project will contribute to a reduction in GHG emissions due to the Project’s addition of compact housing and jobs close to public transit, as well as the construction of biking and walking infrastructure.<sup>82</sup> It inexplicably ignores, however, other strategies aimed at reducing GHG emissions included in the SCAG RTP/SCS, such as adaptive reuse of existing structures, an approach with which the Project’s demolition of existing structures and construction of new ones is in direct contradiction.<sup>83</sup>

The DEIR’s statements cannot qualify as analyses of consistency with local, state, and regional plans because they lack any discussion of the plans’ goals and policies as they apply to the Project. An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>84</sup> The DEIR’s discussion fails to meet this standard.

*ii. The DEIR Attempts to Conceal Potentially Significant GHG Emissions by Disguising Mitigation Measures as Project Design Features*

The DEIR concludes that its consistency with local, state, and regional plans signifies that Project GHG emissions cannot be considered significant. As Dr. Clark explains, however, the DEIR’s own calculations of GHG emissions demonstrate that emissions will, in fact, be significant. Without the incorporation of design features

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<sup>81</sup> *Id.*, p. IV.D-49.

<sup>82</sup> *Id.*

<sup>83</sup> 2016-2040 SCAG RTP/SCS, p. 78.

<sup>84</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 520; *Kings County Farm Bureau*, 221 Cal.App.3d at 732.

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meant to reduce emissions, Project-related GHG emissions will increase exponentially, to more than 8 times their current level, from 546 MTCO<sub>2e</sub> to 4,445 MTCO<sub>2e</sub>. Even with the incorporation of such design features, they are still projected to increase to more than 6 times their current level, to 3,394 MTCO<sub>2e</sub>.<sup>85</sup>

The DEIR appears to acknowledge the significance of this increase with the inclusion of several measures designed to minimize adverse impacts—such as from emissions of GHG and other pollutants—while simultaneously concluding that the Project will not result in significant impacts in these areas of concern. However, the DEIR does not mandate the use of the GHG reduction measures as binding mitigation.

Under CEQA, it is improper to attempt to disguise mitigation measures as part of the project's design if this obfuscates the potential significance of environmental impacts.<sup>86</sup> In *Lotus v. Department of Transportation*, an EIR prepared by the California Department of Transportation ("CalTrans") contained measures to help minimize potential stress on redwood trees during highway construction, such as restorative planting, invasive plant removal, watering, and use of an arborist and specialized excavation equipment.<sup>87</sup> The Court of Appeal held that the EIR improperly compressed the analysis of impacts and mitigation measures into a single issue because the EIR did not designate the measures as mitigation and concluded that because of the measures, no significant impacts were anticipated.<sup>88</sup> The Court explained that a significance determination must be made independent of mitigation first, then mitigation can be incorporated, and the effectiveness of those measures can be evaluated.<sup>89</sup> "Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered."<sup>90</sup>

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<sup>85</sup> Clark Comments, p. 10; DEIR Section IV.D Greenhouse Gases, p. IV.D-37; the City chose to quantify Project GHG emissions to satisfy CEQA Guidelines Section 15064.4(a), though it relies only on a qualification threshold to analyze the significance of emissions.

<sup>86</sup> *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 658 (compression of mitigation measures into project design without acknowledging potentially significant impact if effects were not mitigated violates CEQA)

<sup>87</sup> *Id.* at 650.

<sup>88</sup> *Id.* at 656.

<sup>89</sup> *Id.* at 654–656.

<sup>90</sup> *Id.* at 656.



For example, though the DEIR concludes that GHG emissions from the Project will not be significant, it also states that emissions would be reduced through measures such as “technological improvements and additions to California’s renewable resource portfolio.”<sup>91</sup> “Anticipated deployment of improved vehicle efficiency, zero emission technologies, lower carbon fuels, and improvement of existing transportation systems” will further reduce Project emissions.<sup>92</sup> “Enhancements in water conservation technologies” and future improvements in waste management will likewise reduce Project impacts.<sup>93</sup>

Additionally, these measures are a further indication of the DEIR’s violations of CEQA by offering only unenforceable and speculative mitigation. The DEIR provides no analysis of how or to what extent emissions will be reduced by its reliance on unknown future technological advances or actions. The DEIR does not disclose what construction equipment it used to model construction emissions, so its presumption that emissions will be lowered over time—assuming that as older equipment is retired from use, newer, more efficient equipment will replace it—is unreliable. The DEIR provides no guarantee that older, less efficient equipment will not be used in construction.

By failing to make a significance determination about air quality impacts independent of mitigation before incorporating emissions reductions measures into the calculations, the DEIR commits the same fatal error found in *Lotus*. Just as use of specialized equipment and practices to limit impacts to the roots of redwood trees should have been classified as mitigation measures, so too should the incorporation of myriad measures to reduce emissions. The City’s failure to acknowledge the significance of impacts to air quality from pollutant emissions prevents the public from properly evaluating the effectiveness of the mitigation measures proposed.

### **C. The DEIR Fails to Disclose and Analyze Health Risks from Construction and Operational Emissions and Failed to Conduct a Quantified Health Risk Analysis**

An agency must support its findings of a project’s potential environmental impacts with concrete evidence, with “sufficient information to foster informed

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<sup>91</sup> DEIR Section IV.D Greenhouse Gases, p. IV.D-42.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

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public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision.”<sup>94</sup> A project’s health risks “must be ‘clearly identified’ and the discussion must include ‘relevant specifics’ about the environmental changes attributable to the Project and their associated health outcomes.”<sup>95</sup>

Courts have held that an environmental review document must disclose a project’s potential health risks to a degree of specificity that would allow the public to make the correlation between the project’s impacts and adverse effects to human health.<sup>96</sup> In *Bakersfield*, the court found that the EIRs’ description of health risks were insufficient and that after reading them, “the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”<sup>97</sup> Likewise in *Sierra Club*, the California Supreme Court held that the EIR’s discussion of health impacts associated with exposure to the named pollutants was too general and the failure of the EIR to indicate the concentrations at which each pollutant would trigger the identified symptoms rendered the report inadequate.<sup>98</sup> Some connection between air quality impacts and their direct, adverse effects on human health must be made. As the Court explained, “a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.”<sup>99</sup> CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.<sup>100</sup>

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.<sup>101</sup> Challenges to an agency’s failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project’s environmental effects or alternatives, are

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<sup>94</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

<sup>95</sup> *Id.* at 518.

<sup>96</sup> *Id.* at 518–520; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

<sup>97</sup> *Id.* at 1220.

<sup>98</sup> *Sierra Club*, at 521.

<sup>99</sup> *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

<sup>100</sup> *Sierra Club*, 6 Cal.5th at 518–522.

<sup>101</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

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subject to a less deferential standard than challenges to an agency's factual conclusions.<sup>102</sup> Courts reviewing challenges to an agency's approval of a CEQA document based on a lack of substantial evidence will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."<sup>103</sup>

Claiming that emissions of toxic air contaminants ("TACs") will be less than significant, the DEIR fails to include a health risk analysis to disclose the adverse health impacts that will be caused by exposure to TACs from the Project's construction and operational emissions. As a result, the DEIR fails to disclose the potentially significant risk posed to nearby residents and children from TACs, and fails to mitigate it. Because the DEIR fails to support its conclusion that the Project will not have significant health impacts from diesel particulate matter ("DPM") emissions with the necessary analysis, this finding is not supported by substantial evidence.

One of the primary emissions of concern regarding health effects for land development projects is DPM, which can be released during Project construction and operation. The DEIR acknowledges that the greatest potential for TAC emissions during construction would be related to DPM emissions associated with heavy-duty equipment during excavation and grading activities.<sup>104</sup> However, the DEIR failed to perform a quantitative assessment of the Project's DPM emissions, instead concluding that the Project's cancer risk from exposure to DPM would be less than significant based on the DEIR's conclusion that the Project's *criteria pollutant* emissions are less than significant.

The DEIR's health risk conclusion is unsupported for three reasons. First, DPM is not a criteria pollutant like PM<sub>10</sub> and PM<sub>2.5</sub>. Therefore, the DEIR relies on an analysis of the wrong pollutants to analyze health risk. DPM is a toxic air contaminant ("TAC") that is recognized by state and federal agencies, and atmospheric scientists, as causing severe respiratory disease, lung damage, cancer, and premature death. Air districts have recently recognized that "TACs present an even greater health risk than previously thought."<sup>105</sup> By contrast, standard criteria

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<sup>102</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>103</sup> *Id.* (internal quotations omitted).

<sup>104</sup> DEIR Section IV.A Air Quality, p. IV.A-49.

<sup>105</sup> *California Bldg. Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 379.

pollutants, which include both PM<sub>10</sub> and PM<sub>2.5</sub>, are defined under both federal and state laws as “criteria pollutants.”<sup>106</sup> PM alone does not contain toxic chemicals. PM is simply defined as “very small solid or liquid particles that can be suspended in the atmosphere.”<sup>107</sup> TACs, by contrast, are defined as “air pollutant[s] which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. Unlike regular particulate matter, DPM contains toxic chemicals which are not evaluated in a criteria pollutant analysis. The DEIR’s attempt to rely on its criteria pollutant analysis to conclude that DPM emissions are insignificant is therefore a major error, and one which fails to provide any support for the DEIR’s conclusion that the health risk posed by exposure to DPM is insignificant.

Second, the DEIR’s failure to quantify the health risk from DPM exposure is unsupported. CEQA expressly requires that an EIR to discuss, inter alia, “health and safety problems caused by the physical changes” resulting from the project.<sup>108</sup> When a project results in exposure to toxic contaminants, this analysis requires a “human health risk assessment.”<sup>109</sup> OEHHA<sup>110</sup> guidance also sets a recommended threshold for preparing an HRA of a construction period of two months or more.<sup>111</sup> Construction of the instant Project will last at least 24 months.

Third, the DEIR’s conclusion that health risk is less than significant is unsupported by its own inclusion of mitigation measures to minimize the impacts from TAC emissions. The DEIR indicates that the Project would comply with the CARB Air Toxics Control Measure, which limits diesel-powered equipment and vehicle idling to no more than 5 minutes at a location, as well as with the CARB In-

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<sup>106</sup> The seven criteria air pollutants are: ozone (O<sub>3</sub>); carbon monoxide (CO); nitrogen dioxide (NO<sub>2</sub>); sulfur dioxide (SO<sub>2</sub>); PM<sub>10</sub>; PM<sub>2.5</sub>; and lead (Pb).

<sup>107</sup> *CURE v. Mojave Desert Air Qual. Mgm’t Dist.* (2009) 178 Cal. App. 4th 1225, 1231-32; see 40 C.F.R. § 50.6(c).

<sup>108</sup> 14 CCR § 15126.2(a).

<sup>109</sup> *Sierra Club*, 6 Cal.5th at 520; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344, 1369; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219–1220 (CEQA requires that there must be some analysis of the correlation between the project’s emissions and human health impacts).

<sup>110</sup> OEHHA is the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. See OEHHA organization description, available at <http://oehha.ca.gov/about/program.html>.

<sup>111</sup> See “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: [http://oehha.ca.gov/air/hot\\_spots/hotspots2015.html](http://oehha.ca.gov/air/hot_spots/hotspots2015.html) (“OEHHA Guidance”), p. 8-18.

Use Off-Road Diesel Vehicle Regulation. Compliance with these measures “would minimize emissions of TACs during construction” to less than significant levels.<sup>112</sup> Because these measures are designed to reduce impacts, their function in the Project is as mitigation measures.<sup>113</sup> The DEIR fails to describe the extent of the Project’s impacts prior to implementation of these measures, in violation of CEQA.<sup>114</sup> Since the DEIR relies on these measures to reduce adverse impacts, they must be also included as binding mitigation measures.<sup>115</sup> By ensuring compliance with such a measure in order to avoid significant impacts, the City is acknowledging that impacts from TAC emissions will be significant without mitigation. A health risk analysis is necessary to determine how significant those impacts will be and if mitigation measures are sufficient to avoid risks to public health.

a. Substantial Evidence Shows that Operational Emissions Will Result in Potentially Significant Impacts to Public Health

Despite the DEIR’s claim that Project operations will not result in any significant health risks from TAC emissions, the potential cancer risk from diesel exhaust emitted by the Project is significant and unmitigated.

Dr. Clark performed his own analysis using the DEIR’s CalEEMod estimated emissions of 0.5046 lbs per day of fugitive PM<sub>2.5</sub> exhaust for the Project and 0.4615 lbs per day of fugitive PM<sub>2.5</sub> exhaust for the Project alternative.<sup>116</sup> His conclusions are at remarkable odds to those of the DEIR:

These emissions are equivalent to DPM emissions of 169.5 lbs per year to 184.2 lbs per year. Since the City has not attempted to assess what those impacts would be on the local community and in particular the impacts to the adjacent residences, I have prepared a screening assessment of the operational impacts reported in the CALEEMOD analyses for the project. Using the Bay Area Air Quality Management District’s (BAAQMD) Health Risk Calculator, which calculates the adjusted risk and hazard impacts that can be expected with farther distances from the source of emissions, it is possible to

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<sup>112</sup> DEIR Section IV.A Air Quality, p. IV.A-50.

<sup>113</sup> PRC §§ 21002.1(a)(b), 21100(b)(3); 14 CCR § 15126.4.

<sup>114</sup> *Id.*; *Lotus v. Dep’t of Transp.* (2014) 223 Cal. App. 4th 645, 651-52.

<sup>115</sup> *Id.*

<sup>116</sup> Clark Comments, p. 8.

quickly assess the impacts from the project on the adjacent neighbors. The model refines the screening values for cancer risk and PM<sub>2.5</sub> concentrations found in the BAAQMD's Stationary Source Screening Analysis Tool for permitted facilities which contain diesel internal combustion engines (primary source of DPM). The model is recommended by BAAQMD to assess the impacts from facilities where a comprehensive risk screening assessment has not been completed.

For the preferred project design, operational emissions of 0.5046 lbs per day of Fugitive PM<sub>2.5</sub> exhaust would result in cancer risks of 568 in 1,000,000, well in excess of BAAQMD's CEQA Air Quality Guidelines threshold of 10 in 1,000,000.<sup>117</sup> Operational emissions of 0.4615 lbs per day of Fugitive PM<sub>2.5</sub> exhaust would result in cancer risks of 519 in 1,000,000, also well in excess of BAAQMD's threshold of 10 in 1,000,000.<sup>118</sup>

The DEIR provides no substantial evidence in support of its claims that health risks from operational emissions are insignificant. Dr. Clark's analysis, meanwhile, uses data from the DEIR's own modeling files to show that cancer risks resulting from the Project would significantly exceed some agency thresholds.<sup>119</sup>

## **VI. THE DEIR FAILS TO CONSIDER AND ANALYZE CUMULATIVE IMPACTS**

CEQA requires an evaluation of cumulative impacts, defined as "two or more individual effects which, when considered together, are considerable."<sup>120</sup> Such impacts may "result from individually minor but collectively significant projects taking place over a period of time."<sup>121</sup> Lead agencies must consider whether a project's potential impacts, although individually limited, are cumulatively considerable.<sup>122</sup> "Cumulatively considerable" under CEQA means that "the

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<sup>117</sup> BAAQMD CEQA Air Quality Guidelines May 2017, p. 2-5.

<sup>118</sup> Clark Comments, pp. 7-8; see Clark Exhibits 1 & 2.

<sup>119</sup> BAAQMD's threshold is more appropriate than SCAQMD's in this instance because SCAQMD's Health Risk Calculator does not include diesel particulate matter, a major contributor of

<sup>120</sup> 14 C.C.R. § 15355; see also Staff Report, Attachment 10, pp. 894-896 (explaining IS/MND's failure to analyze cumulative impacts from habitat loss).

<sup>121</sup> 14 C.C.R. § 15355(b).

<sup>122</sup> PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

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incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”<sup>123</sup>

CEQA Guidelines section 15130(b)(1) provides two options for analyzing cumulative impacts: (A) list “past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or” (B) summarize “projection contained in an adopted local, regional or statewide plan, or related planning document that describes or evaluates conditions contributing to the cumulative effect.”<sup>124</sup> “When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.”<sup>125</sup>

This analysis necessarily requires the identification of other projects that will be constructed and/or operating over the same time period as the subject project and the analysis of these projects together with the project being reviewed. The DEIR fails to analyze the impacts the Project will have when considered with the more than 30 other projects within the vicinity that are planned, have been completed, or are under construction.<sup>126</sup>

### **A. The DEIR Fails to Disclose, Analyze, and Mitigate Cumulative Impacts to Air Quality**

The DEIR’s list of 20 projects within the Project site’s vicinity<sup>127</sup> omits more than 10 other projects, amounting to more than 3,000,000 square feet of nearby projects. The DEIR’s failure to account for all of the proposed and active construction projects in the Project’s vicinity reveals the erroneous existing baseline from which the DEIR’s entire analysis of cumulative air quality impacts follows.

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<sup>123</sup> CEQA Guidelines §15064(h)(1).

<sup>124</sup> 14 C.C.R. § 15130(b)(1).

<sup>125</sup> *Id.*; *see id.* § 15130(a) (stating that the lead agency shall describe its basis for concluding that an incremental effect is not cumulatively considerable).

<sup>126</sup> Clark Comments, p. 2; <https://downtownla.com/maps/development/in-the-pipeline/arts-district/all> (last accessed Jan. 22, 2021).

<sup>127</sup> DEIR Appendix L.1 Traffic Study, pp. 41–42.  
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Furthermore, the DEIR declines to perform any analysis of cumulative impacts from GHG emissions, stating that “the proximity of the Project to other GHG emission generating activities is not directly relevant to the determination of a cumulative impact because climate change is a global condition.”<sup>128</sup> It goes on to reason that, because the CAPCOA holds that GHG emissions are always cumulative due to the global nature of climate change, any analysis it has performed is necessarily a cumulative one, and any further analysis is unnecessary.<sup>129</sup> It concludes that “[d]ue to the complex physical, chemical, and atmospheric mechanisms involved in global climate change, there is no basis for concluding that the Project’s increase in annual GHG emissions would cause a measurable change in global GHG emissions necessary to influence global climate change.”<sup>130</sup> The DEIR’s statement that “[t]he GHG emissions of the Project alone would not likely cause a direct physical change in the environment”<sup>131</sup> is a direct violation of the CEQA Guidelines’ mandate that a lead agency explain that the project’s “incremental contribution to the cumulative effect is not cumulatively considerable.”<sup>132</sup> Moreover, CEQA describes GHG impacts as inherently cumulative impacts, and does not excuse the lead agency from addressing these impacts as cumulative impacts.<sup>133</sup> Merely stating that a project’s impacts are not significant because it is “unlikely” that they are is not sufficient to support that conclusion.

The provision of the CEQA Guidelines that permitted agencies to conclude air emissions would be cumulatively insignificant because they are small in the grand scheme of things has been struck down by the Courts. Indeed, as was recognized in *CBE v. CRA* and *Kings County Farm Bureau*, the relevant analysis is not the relative amount of emissions from the Project compared with other emissions, but “whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.”<sup>134</sup> As Dr. Clark explained in his comment letter, the Project’s emissions are significant and, when considered along with those from nearby projects, will contribute heavily to impacts to air quality and public health.<sup>135</sup>

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<sup>128</sup> DEIR Section IV.D Greenhouse Gases, p. IV.D-55.

<sup>129</sup> *Id.*

<sup>130</sup> DEIR Section IV.D Greenhouse Gases, p. IV.D-43.

<sup>131</sup> *Id.*

<sup>132</sup> 14 CCR §§ 15130(a); (b)(1); 15064.4(b).

<sup>133</sup> 14 CCR § 15064.4(b).

<sup>134</sup> *Id.* at 118–121; *Kings County Farm Bureau*, 221 Cal.App.3d at 718.

<sup>135</sup> Clark Comments, pp. 3–4; <https://downtownla.com/maps/development/in-the-pipeline/arts-district/all> (last accessed Jan. 22, 2021).

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## VII. CONCLUSION

An EIR “protects not only the environment but also informed self-government” by informing the public and its responsible officials of the environmental consequences of government decisions before they are made.<sup>136</sup> The DEIR fails to fulfill CEQA’s informational and procedural requirements in multiple ways, including in its description of crucial Project details and establishing an accurate existing baseline, as well as from all analyses, conclusions, and proposed mitigation derived therefrom. As such, the extent of the Project’s adverse environmental impacts is hidden from public view. The City cannot rely on the document to determine if the Project’s benefits outweigh its environmental impacts or if those impacts have been lessened or avoided to the extent feasible.

The DEIR must be revised and recirculated, consistent with CEQA’s Legislative intent and substantive requirements.

Sincerely,

Kendra Hartmann

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<sup>136</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; see also e.g., Pub. Resources Code, § 21061 (“The purpose of an [EIR] is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”)

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August 24, 2021

### **Via Email and U.S. Mail**

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**Re: Agenda Item 1: Comments on the Final Environmental Impact Report – 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV-2016-3691-EIR; CPC-2016-3689-GPA-ZC-HD-MCUP-DB-SPR; VTT-74550)**

Dear Hearing Officer, Ms. Afshar:

We are writing on behalf of Coalition for Responsible Equitable Economic Development (“CREED LA”) to provide comments on the Final Environmental Impact Report (“FEIR”) and related proposed approvals for the 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV 2016-3691-EIR; CPC-2016-3689-GPA-ZC-HD-MCUP-DB-SPR; VTT-74550) (“Project”), proposed by District Centre, LP, & District Centre-GPA, LP (collectively, “Applicant”). The Applicant seeks approval of the FEIR, as well as approvals of a Vesting Tentative Tract Map, haul route to export approximately 74,500 cubic yards of soil, General Plan amendment, vesting zone change and height district change, conditional use permit to allow the sale and dispensing of alcohol, a density bonus compliance review, and a site plan review. All approvals will be subsequently considered by the City Planning Commission on October 28, 2021.

The Project proposes the demolition of an existing warehouse and surface parking lot, and the construction of an up-to 197,355-square-foot mixed-use building, including up to 185 live/work units, approximately 15,320 square feet of

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open space for residents, up to 23,380 square feet of art-production and commercial space, and associated parking facilities. The Project site is located at 668-678 S. Mateo Street and 669-679 S. Imperial Street in the Central City North community of the City of Los Angeles, and consists of eight contiguous lots associated with Assessor Parcel Number 5164-020-021.

On January 25, 2021, we submitted comments on the Project's Draft EIR ("DEIR"). However, the City failed to make all of the documents referenced or relied upon in the DEIR available for the entire public comment period, providing the last of our requested documents just three days before the close of the comment period. As a result, CREED LA was granted an additional two weeks to prepare supplemental comments, which we submitted on February 8, 2021. The FEIR now goes before a joint hearing of the Deputy Advisory Agency and a Hearing Officer. The Deputy Advisory Agency will consider the FEIR and the application for a Vesting Tentative Tract Map, as well as a proposed haul route to export approximately 74,500 cubic yards of soil from the Project site, while the Hearing Officer will take testimony on behalf of the City Planning Commission on the Project's proposed entitlements.

Based upon our review of the FEIR and the City's responses to comments on the DEIR, we conclude that the FEIR fails to comply with CEQA. Though the FEIR responds to some of our comments, it fails to address or resolve many of the major issues we raised. In addition, significant new information is included in the FEIR, necessitating the recirculation of the DEIR to allow the public to meaningfully review and comment on significant impacts or feasible mitigation measures that had previously been omitted. Moreover, the FEIR fails to adequately analyze the Project's impacts related to air quality, greenhouse gas ("GHG") emissions, cumulative impacts, noise impacts, and adverse effects on public health and safety. It also fails to propose mitigation measures capable of reducing potentially significant impacts to less than significant levels, leaving major Project impacts significant and unmitigated. Finally, as a result of these ongoing impacts, the City cannot make the findings required under State and City laws to issue the Project's land use entitlements.

We have reviewed the FEIR and its appendices with assistance from air quality expert James Clark, Ph.D., and acoustics expert Neil A. Shaw, FASA,

FAES.<sup>1</sup> We incorporate by reference all comments included in the expert letters, as well as our earlier preliminary and supplemental comments on the DEIR.

## **I. STATEMENT OF INTEREST**

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. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Los Angeles.

Individual members of CREED LA and its member organizations include John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias. These individuals live, work, recreate, and raise their families in the City of Los Angeles and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

In addition, CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

## **II. THE ADDITION OF SIGNIFICANT NEW INFORMATION REQUIRES RECIRCULATION OF THE DEIR**

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<sup>1</sup> James Clark Rebuttal Comments on FEIR, attached as **Exhibit A** (hereinafter "Clark Rebuttal Comments"); Neil Shaw Rebuttal Comments on FEIR, attached as **Exhibit B** (hereinafter "Shaw Rebuttal Comments").

CEQA requires that an agency recirculate a draft EIR for additional public comment if it adds significant new information after for the close of the public comment period on the draft EIR or if consultation with other responsible and interested agencies identifies new issues.<sup>2</sup> New information is significant if, among other things, “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project” or it demonstrates that “a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.”<sup>3</sup> A decision not to recirculate an EIR “must be supported by substantial evidence in the administrative record.”<sup>4</sup>

The City, in its statement of Revisions, Clarifications, and Corrections to the DEIR, asserts that recirculation is not necessary as any “additions and corrections would not result in new significant impacts or increase the impacts of the Project.”<sup>5</sup> However, the FEIR fails to acknowledge that several of its revisions are indeed, significant, and will result in impacts not previously addressed in the DEIR.

Notably, the FEIR includes new construction haul routes that were not analyzed in the DEIR. The City made a major revision from the DEIR by altering the haul routes along which approximately 74,500 cubic yards of soil will be exported during Project construction, resulting in at least 142 commercial truck trips per day passing through local neighborhoods that were not analyzed in the DEIR.

The Project’s outbound haul route was initially described in the DEIR to travel south on Mateo Street and east on E. 7th Street to the I-5. The inbound haul route was to exit the I-10 toward Santa Fe Avenue and Mateo Street, travel west down E. 8th Street, and north onto Mateo Street. The FEIR, however, contains a revised outbound haul route which now travels outbound down Imperial Street before heading east on E. 7th Street toward the I-5. The revised inbound route, meanwhile, would head east on E. 8th Street, north on Santa Fe Avenue, west on Jesse Street, and south onto Imperial Street. The FEIR also includes the addition of a new off-site truck staging area to support hauling activities on Imperial and Jesse streets.<sup>6</sup>

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<sup>2</sup> Pub. Resources Code § 21092.1; 14 C.C.R. § 15088.5.

<sup>3</sup> 14 C.C.R. § 15088.5(a).

<sup>4</sup> *Id.*, subd.(e).

<sup>5</sup> Revisions, Clarifications, and Corrections to the DEIR, p. III-58.

<sup>6</sup> *Id.*, p. III-2.

It appears the City revised the haul routes in response to comments on the DEIR from residents of the Toy Factory and Biscuit Company lofts, both located on Mateo Street where the original haul route was proposed, as well as in response to comments submitted on behalf of the Los Angeles Unified School District. Their comments expressed concerns about noise impacts and pedestrian safety along the proposed haul routes. Additionally, comments we submitted in conjunction with acoustics expert Neil Shaw indicated that the DEIR's estimated noise impacts to nearby residents along the original haul routes were likely to be considerably worse when calculated using the correct distances of the truck paths from residences, rather than the more lengthy distances inaccurately used in the DEIR to estimate noise impacts.<sup>7</sup>

Rather than adopt additional mitigation along the original haul routes to reduce noise impacts, the FEIR simply moved the location of the haul routes to a different neighborhood. While re-routing the haul trucks away from the original sensitive receptors will alleviate the concerns of those residents, it poses new problems for the sensitive receptors located along the new routes. The AMP Lofts, for example, are situated between Imperial Street and Santa Fe Avenue, directly in the path of the revised inbound and outbound haul routes.<sup>8</sup> Though the City claims that any revisions or additions to the FEIR would not result in significant or increased Project impacts, the City has not analyzed the impacts on residents of the AMP Lofts or other neighboring uses along the new haul routes or adopted additional mitigation for the new neighborhood. The new haul routes are therefore likely to result in the same significant, unmitigated noise impacts in the AMP Lofts neighborhood as they would in the originally proposed neighborhoods. The change in haul routes is therefore new information about a change in the Project description which is likely to result in new, unmitigated noise impacts. This new information requires revisions to the EIR and recirculation for additional public comment. As-yet unaware that they are about to be made the recipients of significant noise impacts from haul trucks making 142 trips per day—about one truck every 6 minutes—for 66 days, residents of the AMP Lofts and other residences and businesses along the new haul routes would likely welcome the opportunity to review and comment on the Project's proposed activities.

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<sup>7</sup> ABJC DEIR Comments, p. 12.

<sup>8</sup> Mr. Shaw confirmed that relocation of the haul routes to Imperial Street and Santa Fe Avenue will do nothing to mitigate the noise impacts of the haul trucks—it will merely relocate the impacts along with the trucks. Shaw Rebuttal Comments, p. 2.

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The City’s conclusory statement that “additions and corrections would not result in new significant impacts or increase the impacts of the Project” ignores these significant impacts to sensitive receptors which were not considered in the DEIR. As required by the statute, the inclusion of new information, which can include “changes in the project or environmental setting as well as additional data or other information,” calls for recirculation of the DEIR absent substantial evidence showing that recirculation is unnecessary.<sup>9</sup> The City’s assertion that “the additions and corrections to the Draft EIR address typographical errors, provide minor revisions, and augment the analysis of the Draft EIR and would not result in new significant impacts or an increase in any impact already identified in the Draft EIR” is not supported by any evidence, substantial or otherwise. The DEIR must be recirculated to provide the public a meaningful opportunity to comment upon a substantial adverse effect of the Project.

### **III. THE FEIR STILL FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE THE PROJECT’S POTENTIALLY SIGNIFICANT IMPACTS TO NOISE, CUMULATIVE AIR QUALITY, AND RISKS TO PUBLIC HEALTH**

#### **A. The City’s Failure to Conduct a Health Risk Analysis is Contrary to Law**

The FEIR continues to assert that the City is not required to analyze the human health effects of the Project’s direct or indirect air quality emissions on local sensitive receptors or future Project residents. The City’s position is contrary to law. An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>10</sup> These standards apply to an EIR’s analysis of public health impacts of a project.

In *Sierra Club v. County of Fresno*, the California Supreme Court affirmed CEQA’s mandate to protect public health and safety by holding that an EIR fails as an informational document when it fails to disclose the public health impacts from air pollutants that would be generated by a development project.<sup>11</sup> In *Sierra Club*,

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<sup>9</sup> 14 C.C.R. § 15088.5.

<sup>10</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732.

<sup>11</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518–522.

the Supreme Court held that the EIR for the Friant Ranch Project—a 942-acre master-planned, mixed-use development with 2,500 senior residential units, 250,000 square feet of commercial space, and open space on former agricultural land in north central Fresno County—was deficient as a matter of law in its informational discussion of air quality impacts as they connect to adverse human health effects.<sup>12</sup> As the Court explained, “a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.”<sup>13</sup> The Court concluded that the County’s EIR was inadequate for failing to disclose the nature and extent of public health impacts caused by the project’s air pollution. The EIR failed to comply with CEQA because the public, after reading the EIR, “would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”<sup>14</sup> CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.<sup>15</sup>

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.<sup>16</sup> Challenges to an agency’s failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project’s environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency’s factual conclusions.<sup>17</sup> Courts reviewing challenges to an agency’s approval of an EIR based on a lack of substantial evidence will “determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements.”<sup>18</sup>

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<sup>12</sup> *Id.* at 507–508, 518–522.

<sup>13</sup> *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

<sup>14</sup> *Id.* at 518. CEQA’s statutory scheme and legislative intent also include an express mandate that agencies analyze human health impacts and determine whether the “**environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.**” (Public Resources Code § 21083(b)(3) (emphasis added).) Moreover, CEQA directs agencies to “take immediate steps to identify any critical thresholds for the **health and safety of the people** of the state and take all coordinated actions necessary to prevent such thresholds being reached.” (Public Resources Code § 21000(d) (emphasis added).)

<sup>15</sup> *Sierra Club*, 6 Cal.5th at 518–522.

<sup>16</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

<sup>17</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>18</sup> *Id.* (internal quotations omitted).



CREED LA's comments on the DEIR explained that the City failed to conduct a quantified health risk analysis of the Project's construction and operational emissions on local sensitive receptors. Rather than correct this error by providing a quantitative analysis in a revised EIR, the FEIR asserts that the City was not required to conduct this analysis because the Project does not qualify as an industrial project which would require a health risk analysis under SCAQMD guidance. However, it is not SCAQMD's rules that govern the scope of analysis required by CEQA, it is CEQA itself. By refusing to conduct a legally required analysis of the Project's health impacts, the FEIR ignores CEQA's clear mandate that agencies analyze human health impacts and determine whether the "environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly."<sup>19</sup>

CEQA expressly requires that an EIR discuss, inter alia, "health and safety problems caused by the physical changes" resulting from the project.<sup>20</sup> Guidance issued by the Office of Environmental Health Hazard Assessment ("OEHHA")<sup>21</sup> also sets a recommended threshold for preparing an HRA of a construction period of two months or more.<sup>22</sup> The City dismisses both CEQA's requirement and OEHHA's recommendation by insisting that "[n]either the City of Los Angeles nor the SCAQMD currently require operational emission health risk analyses for all projects in their jurisdiction."<sup>23</sup> It further concludes, without providing any supporting evidence, that the Project would not result in any adverse health impacts from construction, and so does not require a construction health risk analysis. Though the DEIR conceded that "the greatest potential for TAC emissions resulting from construction of the Project would involve diesel particulate emissions associated with trucks and heavy equipment,"<sup>24</sup> it continues, within the same paragraph, to make the unsupported determination that "[g]iven the temporary and short-term construction schedule (approximately 24 months), the Project would not

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<sup>19</sup> Pub. Resources Code § 21083(b)(3).

<sup>20</sup> 14 CCR § 15126.2(a).

<sup>21</sup> OEHHA is the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. See OEHHA organization description, available at <http://oehha.ca.gov/about/program.html>.

<sup>22</sup> See "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: [http://oehha.ca.gov/air/hot\\_spots/hotspots2015.html](http://oehha.ca.gov/air/hot_spots/hotspots2015.html) ("OEHHA Guidance"), p. 8-18.

<sup>23</sup> Response to Comment 6-30, p. II-72.

<sup>24</sup> DEIR Section IV.A Air Quality, p. IV.A-49.

result in a long-term (i.e., lifetime or 30-year) exposure as a result of Project construction.”<sup>25</sup> Using this unsupported reasoning, construction projects, which by their nature are temporary, would never result in adverse impacts to air quality or public health.

The City’s conclusions that neither construction nor operation will result in significant impacts, and therefore do not warrant the preparation of a health risk analysis, are entirely unsupported. Rather, the City relies on conclusory statements and unsupported data sets: “Simply put, the Project would not involve the large-scale use of diesel-powered equipment or vehicles during operations and would, therefore, not be a source of substantial diesel particulate matter (“DPM”) emissions in accordance with guidance from SCAQMD.”<sup>26</sup> A construction health risk analysis, the City asserts, is unnecessary because the DEIR provides support—in the form of unverified emissions estimates—for the conclusion that emissions of toxic air contaminants (“TACs”) will be less than significant.<sup>27</sup>

The City’s response to our DEIR comments, as well as those of Dr. Clark, further attempts to justify its failure to conduct an HRA for construction and operation by distorting the guidance offered by the OEHHA in its guidelines on risk assessments of short-term projects. The City implies that, because OEHHA recommends that a 30-year exposure duration be used for health risk analyses, and because Project construction will last 24 months, or just 6.6 percent of 30 years, a health risk analysis is not necessary.<sup>28</sup> OEHHA, however, does not strictly recommend a 30-year exposure duration—9-year, 30-year, and 70-year durations are all recommended to obtain data on a range of residency periods. Furthermore, while the City is correct that OEHHA does not require preparation of an HRA for short-term projects, the City ignores the legal reality that CEQA requires such an analysis. Moreover, it is clear from the OEHHA guidelines that short-term exposures may place some sensitive receptors at higher risk than longer-term exposures, prompting OEHHA to suggest consideration of a lower risk threshold for risk management of very short-term projects.<sup>29</sup> The City’s conclusion that “it is not accurate to extrapolate this statement into a conclusion that all other longer

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<sup>25</sup> DEIR Section IV.A Air Quality, p. IV.A-49.

<sup>26</sup> Response to Comment 6-16, p. II-57.

<sup>27</sup> DEIR Section IV.A Air Quality, p. IV.A-49–54.

<sup>28</sup> Response to Comment 6-31, p. II-75.

<sup>29</sup> OEHHA Air Toxics Hot Spots Program Risk Assessment Guidelines, p. 8-18.

construction events should be assessed” is contrary to CEQA, to OEHHA guidance, and is unsupported by any evidence in the record.<sup>30</sup>

*i. The City’s Methodology to Determine the Necessity of a Health Risk Analysis is Unsupported by Substantial Evidence*

Courts have held that an agency has discretion to select the methodology with which it analyzes an impact, provided the agency’s decision to use a given methodology is supported by substantial evidence.<sup>31</sup> “The fact that different inferences or conclusions could be drawn, or that different methods of gathering and compiling statistics could have been employed, is not determinative in a substantial evidence review. The issue is not whether other methods might have been used, but whether the agency relied on evidence that a ‘reasonable mind might accept as sufficient to support the conclusion reached’ in the EIR.”<sup>32</sup> Agencies do not need to follow the methods recommended by regulatory agencies or other interested agencies as long as the agency can show it “has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute ...”<sup>33</sup>

Here, the City relies on a SCAQMD methodology to determine whether it is necessary at all to perform a construction or operational health risk analysis, rather than to select the method for analyzing the impact. A methodology which results in conclusions that are contrary to the legal mandates of CEQA cannot be supported by substantial evidence.

For example, the City’s responses to comments state that an operational HRA need not be performed because SCAQMD requires such analyses only for facilities that include “activities that have the potential to generate high levels of DPM,”<sup>34</sup> such as truck idling and movement (truck stops or warehouse, distribution, or transit centers); ship hoteling at ports; and train idling.<sup>35</sup> As the Project does not include any of these activities, and because the City determined (without

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<sup>30</sup> Response to Comment 6-31, p. II-75.

<sup>31</sup> See, e.g., *Laurel Heights Improvement Ass’n v. Regents of the Univ. of California* (1988) 47 Cal.3d 376; *North Coast Rivers Alliance v. Marin Municipal Water Dist.* (2013) 216 Cal.App.4th 614, 642-643.

<sup>32</sup> *Id.*, p. 642.

<sup>33</sup> *Id.*, p. 643.

<sup>34</sup> Response to Comment 6-30, p. II-72.

<sup>35</sup> *Id.*

quantifying DPM emissions) that it would not be a significant source of on-site diesel emissions, the FEIR concludes that “an operational HRA is neither warranted nor required.”<sup>36</sup> However, because CEQA requires that impacts, including those from operational emissions, be analyzed in an HRA, the City’s methodology—which excludes certain projects from health risk analyses—is not supported by substantial evidence.

Additionally, the FEIR continues to rely on an unsupported conclusion that “the Project’s cancer risk from exposure to DPM would be less than significant based on the conclusion that the Project’s criteria pollutant emissions are less than significant.”<sup>37</sup> As Dr. Clark explained in our DEIR comments, DPM is not a criteria pollutant. It is a TAC which must be measured separately from the Project’s criteria pollutant emissions. Rather than quantify DPM emissions, the FEIR again claims that “an operational health risk assessment was not conducted for the Project because Project operations are not a substantial source of diesel particulate matter (DPM) emissions.”<sup>38</sup>

As in the DEIR, the FEIR relies on a localized significance threshold (“LST”) analysis to support its conclusion that “nearby sensitive receptors to a project are not adversely affected by emissions from on-site construction activities that are in close proximity to nearby receptors.”<sup>39</sup> However, an LST analysis is only applicable to criteria pollutants emissions from NOx, CO, PM10, and PM2.5. It does not measure DPM emissions. Because an LST analysis can only be applied to criteria air pollutants, by design, this method cannot be used to determine whether emissions from DPM will result in a significant health risk impact to nearby sensitive receptors. Therefore, any health risk impacts from exposure to TACs, such as DPM, were not considered in the LST analysis for the proposed Project, rendering the FEIR’s conclusions unsupported by substantial evidence. The City’s attempt to rely on its criteria pollutant analysis to conclude that DPM emissions are insignificant fails to provide any support for the DEIR’s conclusion that the health risk posed by exposure to DPM is insignificant.

## **B. Substantial Evidence Demonstrates Potentially Significant Risks to Human Health**

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<sup>36</sup> *Id.*

<sup>37</sup> Response to Comment 6-16, p. II-57.

<sup>38</sup> Response to Comment 6-31, p. II-74.

<sup>39</sup> Response to Comment 6-31, p. II-76.

To demonstrate the potential health risk posed by Project construction and operation to nearby sensitive receptors, Dr. Clark prepared a simple screening-level health risk analysis, using the Bay Area Air Quality Management District's ("BAAQMD") Health Risk Calculator, which calculates the adjusted risk and hazard impacts that can be expected with farther distances from the source of emissions.<sup>40</sup>

Dr. Clark used the DEIR's CalEEMod estimated emissions of 0.5046 lbs per day of fugitive PM<sub>2.5</sub> exhaust for the Project and 0.4615 lbs per day of fugitive PM<sub>2.5</sub> exhaust for the Project alternative.<sup>41</sup> His calculations were included in his earlier comments and CREED LA's preliminary comments on the DEIR.<sup>42</sup> We restate his findings here:

These emissions are equivalent to DPM emissions of 169.5 lbs per year to 184.2 lbs per year. Since the City has not attempted to assess what those impacts would be on the local community and in particular the impacts to the adjacent residences, I have prepared a screening assessment of the operational impacts reported in the CALEEMOD analyses for the project. Using the Bay Area Air Quality Management District's (BAAQMD) Health Risk Calculator, which calculates the adjusted risk and hazard impacts that can be expected with farther distances from the source of emissions, it is possible to quickly assess the impacts from the project on the adjacent neighbors. The model refines the screening values for cancer risk and PM<sub>2.5</sub> concentrations found in the BAAQMD's Stationary Source Screening Analysis Tool for permitted facilities which contain diesel internal combustion engines (primary source of DPM). The model is recommended by BAAQMD to assess the impacts from facilities where a comprehensive risk screening assessment has not been completed.

For the preferred project design, operational emissions of 0.5046 lbs per day of Fugitive PM<sub>2.5</sub> exhaust would result in cancer risks of 568 in 1,000,000, well in excess of BAAQMD's CEQA Air Quality Guidelines threshold of 10 in 1,000,000.<sup>43</sup> Operational emissions of 0.4615 lbs per

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<sup>40</sup> Clark DEIR Comments, p. 8.

<sup>41</sup> Clark Comments, p. 8.

<sup>42</sup> CREED LA DEIR Comments, p. 22.

<sup>43</sup> BAAQMD CEQA Air Quality Guidelines May 2017, p. 2-5.

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day of Fugitive PM<sub>2.5</sub> exhaust would result in cancer risks of 519 in 1,000,000, also well in excess of BAAQMD's threshold of 10 in 1,000,000.<sup>44</sup>

The FEIR provides no substantial evidence in support of its claims that health risks from operational emissions are insignificant. Dr. Clark's analysis, meanwhile, uses data from the DEIR's own modeling files to show that cancer risks resulting from the Project would significantly exceed some agency thresholds.<sup>45</sup> Dr. Clark's analysis provides substantial evidence demonstrating that the Project has potentially significant, unmitigated health risks which must be addressed in a revised EIR.

### **C. The FEIR Fails to Disclose and Mitigate Significant Cumulative Impacts**

As indicated in our earlier comments, cumulative impacts, evaluation of which is required by CEQA, may "result from individually minor but collectively significant projects taking place over a period of time."<sup>46</sup> Lead agencies must consider whether a project's potential impacts, although individually limited, are cumulatively considerable.<sup>47</sup>

In its response to comments on cumulative Project impacts, the City points out that it has opted to follow SCAQMD's methodology for cumulative impacts, which only considers projects that already exceed its thresholds for criteria pollutants as capable of contributing to cumulatively considerable impacts.<sup>48</sup> Though the 2006 LA CEQA Threshold Guide has also adopted a method to analyze cumulative impacts, the City claims that it has opted for SCAQMD's because the LA CEQA Thresholds Guide "does not take into account all projects that contribute emissions within the Basin."<sup>49</sup> This argument, however, conflicts with readily available evidence that, under SCAQMD's approach, many projects with potentially significant emissions would not be taken into consideration due to the Project's criteria pollutant emissions being lower than SCAQMD's threshold.

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<sup>44</sup> Clark Comments, pp. 7–8; see Clark Exhibits 1 & 2.

<sup>45</sup> BAAQMD's threshold is more appropriate than SCAQMD's in this instance because SCAQMD's Health Risk Calculator does not include diesel particulate matter, a major contributor of

<sup>46</sup> 14 C.C.R. § 15355(b).

<sup>47</sup> PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

<sup>48</sup> Response to Comment 6-27, p. II-66.

<sup>49</sup> *Id.*

By this “drop in the bucket” reasoning, there would be no limit to the number of projects that could emerge in close vicinity to each other, without any consideration of cumulative impacts, as long as they all kept their individual emissions below SCAQMD’s criteria pollutant threshold. As we pointed out in our preliminary comments, the provision of the CEQA Guidelines that permitted agencies to conclude air emissions would be cumulatively insignificant because they are small in the grand scheme of things has been struck down by the Courts. Indeed, as was recognized in *CBE v. CRA* and *Kings County Farm Bureau*, the relevant analysis is not the relative amount of emissions from the Project compared with other emissions, but “whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.”<sup>50</sup> As Dr. Clark explains in his rebuttal comment letter, the Project’s emissions are significant and, when considered along with those from nearby projects, will contribute heavily to impacts to air quality and public health.<sup>51</sup>

The Project is located less than 2 blocks away from the much larger 670 Mesquit Project and the 6AM Project, both potential sources of significant emissions from the construction and operational phases.<sup>52</sup> The 670 Mesquit Project is anticipated to include 308 residential units and approximately 1,484,196 square feet of office, hotel, restaurant, retail, studio/event/gallery and a potential museum, a gym, and structured parking. The 6AM Project would involve the development of approximately 2,824,245 square feet of apartments, condominiums, a hotel, restaurants, retail space, office space, art museum, warehousing, and a school. Given the size and proximity of the 670 Mesquit Project and the 6 AM Project, the 676 Mateo Project will be situated well within the radius of influence for air pollution, GHG emissions and traffic impacts from the larger projects. It is absurd to assume that, because its emissions of criteria pollutants are lower than SCAQMD’s threshold, the Project will not have any bearing on air quality impacts when considered in conjunction with these other large projects—not to mention dozens more in the area—developing in close proximity. Even if impacts from these projects were individually limited, they will certainly be cumulatively considerable.

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<sup>50</sup> *Id.* at 118–121; *Kings County Farm Bureau*, 221 Cal.App.3d at 718.

<sup>51</sup> Clark Comments, pp. 3–4; <https://downtownla.com/maps/development/in-the-pipeline/arts-district/all> (last accessed Jan. 22, 2021).

<sup>52</sup> City of Los Angeles. 2017. Initial Study, 670 Mesquit Project, Case Number ENV-2017-249-EIR.  
City of Los Angeles. 2017. Initial Study, 6AM Project, ENV-2016-3758-EIR  
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The City’s response to comments on cumulative impacts is non-responsive, and provides no legal or evidentiary support for its conclusion that the Project will not contribute to cumulative impacts throughout the region.

**D. The FEIR Fails to Disclose, Analyze, and Mitigate Potentially Significant Noise Impacts**

Appendix G of the CEQA Guidelines requires consideration in an EIR of “whether a project would result in...[g]eneration of a substantial temporary or periodic increase in ambient noise levels in the vicinity of the project . . .”<sup>53</sup> As explained in our Preliminary Comments on the DEIR, the City’s analysis of noise impacts from Project construction and operation is inadequate and flawed, starting with insufficient measurements of baseline ambient noise levels. The City’s response provides no explanation for its use of inadequate baseline data, nor does it counter our argument with substantial evidence supporting its claim.

In response to our comments regarding the inadequate baseline measurements, the City states only that “the City of Los Angeles CEQA Thresholds Guide does not specify a minimum number or frequency of ambient noise readings that should be taken at a project site or in the project vicinity.”<sup>54</sup> The City insists that its baseline measurements—two, 15-minute, on-site noise measurements conducted on a single day in the same hour—adequately represented the baseline ambient noise levels at the Project site.<sup>55</sup> However, as Mr. Shaw points out, “ambient noise measurements must accurately characterize the ambient noise such that noise generated over the course of the day can be fully assessed with respect to the impacts from a project. Therefore, the Response does not justify or validate the ambient noise measurements used and all subsequent analysis and projections are suspect.”<sup>56</sup> The City’s response is non-responsive and provides no evidence to support its reliance on overly limited noise data to establish baseline levels.

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<sup>53</sup> CEQA Guidelines, Appendix G, Sec. XII(d).

<sup>54</sup> Response to Comment 6-10, p. II-43.

<sup>55</sup> *Id.*; the City’s account of its own data is confusing: responses to comments state that the data presented in Table IV.H-7 of the DEIR was collected on February 14, 2017; Table IV.H-7, however, indicates that its data was collected on July 5, 2017, the same date indicated on the noise monitoring field reports contained in DEIR Appendix I. Neither the DEIR nor the FEIR contain a field report dated February 14, 2017.

<sup>56</sup> Shaw Rebuttal Comments, p. 2.



Furthermore, the City, in response to our comments that the DEIR failed to disclose or mitigate potentially significant noise impacts likely to result from operational noise sources, particularly commercial businesses seeking a permit for the sale and dispensing of alcohol, offered only the assumption that such commercial operations “would manage their own levels to ensure an acceptable patron experience.”<sup>57</sup> No mitigation or analysis was provided. Any excessive noise, the City maintains, “would be regulated by LAMC Section 116.01, which provides that ‘it shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary, and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.’”<sup>58</sup>

We again reiterate that the City’s approach fails to comply with law. The courts have held that compliance with regulations, including noise ordinances, is not an adequate significance threshold because it does not foreclose the possibility of significant impacts.<sup>59</sup> Similarly, here, compliance with any LAMC threshold or directive does not assure that noise impacts will be less than significant, or that mitigation will not be required.

With respect to construction noise thresholds, the City corrects an error contained in the DEIR, citing the wrong section of the LAMC in reference to a 75-dBA threshold. It clarifies that such threshold was not used by the City to determine construction noise impacts, but rather an increase in ambient levels of 5 dBA or more was considered significant in the City’s analysis.<sup>60</sup> The response, however, does not address our comments regarding significant noise impacts from construction and operation.

The City indicates it has resolved the issue of significant noise impacts to sensitive receptors resulting from haul truck trips by rerouting the haul routes. However, as discussed above, it ignores the inevitable impacts that such a revision will have on the residents who live along the new haul routes. Relocating the haul routes, it asserts, will “increase the distance between Mateo Street sensitive receptors and haul trucks from the 15 feet suggested by the commenter to

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<sup>57</sup> Response to Comment 6-7, p. II-39.

<sup>58</sup> *Id.*, p. II-40.

<sup>59</sup> *Keep our Mountains Quiet v. Santa Clara* (2015) 236 Cal.App.4th 714, 733; *CBE v. CRA* (2002) 103 Cal.App.4th 98, 115-16; *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 893, as modified on denial of reh'g (Mar. 20, 2020)

<sup>60</sup> Response to Comment 6-11, p. II-46.

approximately 330 feet.”<sup>61</sup> It says nothing about the distance between the haul trucks and residences along Imperial Street and Santa Fe Avenue.

*i. The FEIR Fails to Adequately Mitigate Significant Construction and Operational Noise Impacts*

Our DEIR comments explained that the proposed mitigation measures meant to address noise impacts were woefully inadequate. The DEIR included, for example, the installation of an 8-foot barrier to reduce impacts during demolition and excavation/grading activities.<sup>62</sup> Such a barrier, Mr. Shaw points out, would provide negligible sound attenuation at best, given the height of the sources, receivers, and distance between the barrier and the receiver.<sup>63</sup> Even a 20-foot barrier, he explains, would only provide limited mitigation to 2nd-story residences; those on the third floor and above would have no recourse.<sup>64</sup>

In response to these comments, the City indicates that the “primary source of potentially significant construction noise impact on the upper floors of the Biscuit Company Lofts and Toy Factory Lofts is the operation of a concrete saw during demolition.”<sup>65</sup> As relief, it proposes to revise Mitigation Measure MM NOI-1 “to provide alternatives to the use of the concrete saw and/or operational restrictions on the use of demolition equipment that would avoid any impact on the upper floors of the neighboring residential buildings.”<sup>66</sup> Without any analysis or supporting evidence, the City then concludes that “[n]oise impacts without employing a concrete saw and during all other phases of construction of the Project would be less than significant without mitigation. No further mitigation is warranted.”<sup>67</sup>

Mr. Shaw points out the obvious shortcomings of the revised mitigation measures, most notably the failure to address impacts from any equipment other than a concrete saw:

The Response appears to note only the concrete saw has an impact, while ignoring other equipment that will be closer to sensitive receptors

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<sup>61</sup> Response to Comment 6-11, p. II-45.

<sup>62</sup> MM NOI-1, DEIR Section IV.H Noise, p. IV.H-34.

<sup>63</sup> Shaw Rebuttal Comments, pp. 1–2.

<sup>64</sup> *Id.*

<sup>65</sup> Response to Comment 6-12, p. II-46.

<sup>66</sup> Response to Comment 6-12, p. II-47.

<sup>67</sup> *Id.*

than the reference distance for noise from the equipment, and then only the impact when used near Mateo Street. This ignores the impact from the saw and other equipment, when closer to receivers than the reference distance, not only on the receivers on Mateo Street, but also on receivers on Imperial Street. The Response does not fully address the substantial impact from this equipment.<sup>68</sup>

The FEIR therefore fails to meaningfully respond to the issues raised in our DEIR comments, which pointed out the ineffectual impact that these mitigation measures were likely to have on construction and operation noise. The FEIR also fails to respond to Mr. Shaw's proposed additional mitigation measure, Plexiglass balcony barriers on the higher levels of the adjacent residential buildings, a measure often used on residential balconies that abut noisy roadways.<sup>69</sup> The FEIR neglected to adopt this measure, and offers no explanation why it or other feasible mitigation to reduce noise impacts have not been adopted. These responses are inadequate.

#### IV. CONCLUSION

The Project presents significant environmental issues that must be addressed prior to Project approval. The FEIR should be revised and recirculated for a full public review period as required by CEQA based on the release of significant new information, including the addition of mitigation measures and a major revision to the Project's haul routes.

The FEIR suffers from a number of additional flaws, including failure to adequately establish the existing baseline upon which to measure noise impacts. The FEIR also fails to perform a health risk analysis of the Project's construction and operational emissions of TACs, in direct contradiction of CEQA's clear mandate that an agency disclose a project's potential health risks to a degree of specificity that would allow the public to make the correlation between the project's impacts and adverse effects to human health. Therefore, the FEIR fails to comply with the requirements of CEQA. The FEIR must be revised and recirculated to correct these errors.

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<sup>68</sup> Shaw Rebuttal Comments, p. 3.

<sup>69</sup> ABJC Preliminary DEIR Comments, p. 13.  
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December 20, 2021  
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Sincerely,

Kendra Hartmann

KDH:acp

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**Agenda Item No. 7**  
**Agenda Item No. 8**

October 26, 2021

### VIA ONLINE SUBMISSION

City Planning Commission  
City of Los Angeles Planning Department  
Email: [cpc@lacity.org](mailto:cpc@lacity.org)

### VIA EMAIL

Jivar Afshar, Planner ([jivar.afshar@lacity.org](mailto:jivar.afshar@lacity.org))

**Re: Agenda Item No. 7: Appeal of Advisory Agency Certification, 676 Mateo Street (VTT-74550;SCH No. 2018021068;ENV-2016-3691-EIR)**  
**Agenda Item No. 8: Approval of Remaining Entitlements Case No. CPC-2016-3689-GPA-ZC-HD-MCUP-DB-SPR)**

Dear Commissioners, Ms. Afshar:

On behalf of the Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA"), we submit these comments in support of our appeal of the Advisory Agency's approval of the Vesting Tentative Tract Map ("VTTM") and certification of the Final Environmental Impact Report ("EIR") for the 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV 2016-3691-EIR; CPC-2016-3689-GPA-ZC-HD-MCUP-DB-SPR; VTT-74550) ("Project"), proposed by District Centre, LP, & District Centre-GPA, LP (collectively, "Applicant") (Agenda Item 7), as well as on the City Planning Commission's ("Commission") proposed approval of the Project's remaining entitlements (Agenda Item 8).

On September 16, 2021, the Advisory Agency issued a Letter of Determination ("LOD") stating that it had certified and adopted the EIR and approved the VTTM for the Project. The LOD states that the Advisory Agency certified the EIR pursuant to CEQA, despite the fact that the Commission had not yet considered or approved the Project's remaining entitlements. This represented a premature and improper bifurcation of the Project's environmental review process. Furthermore, the EIR fails to comply with CEQA.

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. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of L4986-011acp

the State of California, along with their members, their families, and other individuals who live and work in the City of Los Angeles. Individual members of CREED LA and its member organizations include John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias. These individuals live, work, recreate, and raise their families in the City of Los Angeles and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

For the reasons set forth below, in our prior comments, and in those of air quality expert James Clark, Ph.D. (Exhibit A), and acoustics expert Neil A. Shaw, FASA, FAES (Exhibit B), we urge the Commission to uphold our appeal and vacate the Advisory Agency's certification and adoption of the EIR and approval of the Vesting Tentative Tract Map.<sup>1</sup> We also urge the Commission to deny the Project's remaining entitlements and postpone certification of the EIR until it can be corrected and recirculated.

## **I. THE ADVISORY AGENCY'S EIR CERTIFICATION WAS PREMATURE**

The City, in response to the assertion that it cannot certify the EIR prior to consideration and approval of all Project entitlements, stated,

The Advisory Agency, as a decision making body of the City, is authorized by the Los Angeles Municipal Code (LAMC) to approve subdivision maps (LAMC 17.03 A). As such, the Advisory Agency is required to certify the EIR before approving the Project's subdivision map, per CEQA Guidelines Section 15090. The EIR fully disclosed and analyzed the whole of the action, and identified the subdivision requests, as well as the General Plan Amendment, Vesting Zone and Height District change, and other associated entitlement requests.<sup>2</sup>

This statement confuses the EIR's description of the entitlements with the City's approval of the entitlements. An EIR may not be certified until *all* entitlements have been heard and considered by a decision-making body of the City.<sup>3</sup> Until that time, the underlying project description remains uncertain and subject to modification. In order to certify an EIR, CEQA requires that the lead agency determine whether the EIR fully and accurately describes a specific development project that is "proposed to be carried out or approved by

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<sup>1</sup> We reserve the right to submit additional comments and evidence at any subsequent hearings and proceedings related to the Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

<sup>2</sup> VTT 74550 Appeal Staff Report, p. A-3.

<sup>3</sup> 14 CCR § 15090(a)(2).

[the agency],”<sup>4</sup> then make a mandatory finding that the EIR has been “completed in compliance with CEQA.”<sup>5</sup> The Advisory Agency was not in a position to make either of those determinations when it approved the VTTM and “certified” the EIR in August because the Project’s future, scope, and the extent of its environmental impacts remain uncertain until the Commission acts on the remaining entitlements at this hearing.

The fact that the City’s municipal code provides a bifurcated approval process for entitlements does not authorize different decisionmakers to conduct piecemealed certification of the same EIR on multiple occasions. It is well-settled that notice of EIR certification cannot be issued before a project has been approved.<sup>6</sup> This is consistent with the requirement to consider the “whole of an action,”<sup>7</sup> including all reasonably foreseeable phases.<sup>8</sup>

Courts have held that environmental review and approval of a project cannot be separated in a bifurcation of proceedings. “A decision on both matters must be made by the same decisionmaking body because ‘...CEQA is violated when the authority to approve or disapprove the project is separated from the responsibility to complete the environmental review.’”<sup>9</sup> As the court explained in *Clews Land & Livestock, LLC v. City of San Diego*, “for an environmental review document to serve CEQA’s basic purpose of informing governmental decision makers about environmental issues, that document must be reviewed and considered by the *same person or group of persons* who make the decision to approve or disapprove the project at issue.”<sup>10</sup> In *California Clean Energy Committee v. City of San Jose*, the court held that a bifurcated proceeding, in which an EIR was certified prior to the decision-making body considering the adequacy of a project’s environmental review was a violation of CEQA’s mandate to provide the fullest possible protection to the environment.<sup>11</sup> The court clarified that bifurcation was improper because it could “produce a situation in which the city council could be bound by a finding that it finds flawed—that the final EIR is complete and in compliance with CEQA.”<sup>12</sup>

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<sup>4</sup> PRC § 21080(a).

<sup>5</sup> 14 CCR § 15090(a)(1).

<sup>6</sup> See, e.g., *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 963; *Coalition for an Equitable Westlake/Macarthur Park v. City of Los Angeles* (2020) 47 Cal.App.5th 368, 379; *Stockton Citizens for Sensible Planning v. City of Stockton*, 48 Cal. 4th 481, 489; *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 418-25.

<sup>7</sup> 14 CCR § 15378; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.

<sup>8</sup> *Id.*

<sup>9</sup> *Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340, 360, citing *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 731.

<sup>10</sup> (2017) 19 Cal.App.5th 161, 188.

<sup>11</sup> *California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325, 1341.

<sup>12</sup> *Id.*

CEQA Guidelines section 15090 requires that prior to approval of a project, the lead agency must certify that (1) the final EIR is compliant with CEQA, (2) the final EIR was presented to the decisionmaking body of the lead agency and the decisionmaking body reviewed and considered the information in the final EIR prior to approving the project, and (3) the final EIR reflects the lead agency's independent judgment and analysis.<sup>13</sup> The Advisory Agency's August 25, 2021 EIR certification was therefore premature because the majority of the Project's entitlements had not been considered by the Commission and will not be considered until October 28, 2021. The City is engaging in improper bifurcation of its duties under CEQA. The Advisory Agency's certification of the EIR must be vacated.

## II. THE EIR FAILS TO COMPLY WITH CEQA

### A. Air Quality

The City continues to repeat its claim that, in accordance with SCAQMD's methodology for determining cumulative impacts to air quality, a project that does not individually exceed SCAQMD thresholds of significance for emissions will not contribute to cumulatively considerable impacts from emissions. In its response to our appeal, the City asserts that we have provided "no evidence that the combined emissions from three related projects would have any significant cumulative effect on regional air quality. Rather the Appellant incorrectly asserts that there is a significant cumulative impact on regional air quality without substantial evidence."<sup>14</sup> This approach has been rejected by the Courts, and fails to comply with CEQA's requirement that a project mitigate impacts that are "cumulatively considerable."<sup>15</sup> "Proper cumulative impact analysis is vital 'because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.'"<sup>16</sup>

In *Friends of Oroville*, the City of Oroville prepared an EIR for a retail center. The EIR failed to analyze the project's cumulative contribution to GHG impacts by concluding, without analysis, that the project's "miniscule" GHG emissions were insignificant in light of the state's cumulative, state-wide GHG emissions. The EIR concluded that further analysis of the project's GHG impacts would result in "applying a meaningless, relative number to determine an insignificant impact."<sup>17</sup> The court of appeal rejected this approach as an

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<sup>13</sup> CEQA Guidelines, § 15090, subd. (a).

<sup>14</sup> Staff Report, p. A-4.

<sup>15</sup> PRC § 21083(b)(2); 14 CCR § 15130; *Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 721.

<sup>16</sup> *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.

<sup>17</sup> 219 Cal. App. 4th at 841-42.



outright dismissal of the City's obligation to analyze the project's cumulative GHG impacts.<sup>18</sup>

Similarly, in *Kings County Farm Bureau v. City of Hanford*,<sup>19</sup> the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for PM10 and ozone, the City failed to incorporate mitigations for the project's cumulative air quality impacts from project emissions because it concluded that the Project would contribute "less than one percent of area emissions for all criteria pollutants."<sup>20</sup> The city reasoned that, because the project's air emissions were small in ratio to existing air quality problems, that this necessarily rendered the project's "incremental contribution" minimal under CEQA. The court rejected this approach, finding it "contrary to the intent of CEQA."

The City made the same mistake here, assuming that because Project emissions will not exceed SCAQMD thresholds, the impacts will not be cumulatively considerable. Applying this definition of "cumulative" would produce an absurd result: cumulatively considerable impacts would never be generated, no matter how many projects were considered together, as long as they all had individually insignificant impacts. This lack of analysis is precisely what the courts have rejected as inconsistent with the concept that "environmental damage often occurs incrementally from a variety of small sources."<sup>21</sup> The City must prepare a revised DEIR to analyze and mitigate the Project's cumulative impacts.

## B. Noise

We previously commented that, in rerouting the haul truck route to Imperial Street and Santa Fe Avenue, the EIR had not disclosed or mitigated the noise impacts the new haul route would have on the residents along those streets. In response, the City stated that new calculations of noise impacts were made by consultant Eco Tierra on September 13, 2021 to confirm that impacts to those residents would not be significant.<sup>22</sup> The calculations showed that, "at a distance of 37.22 feet, the instantaneous noise level generated by a haul truck passing by the Amp Lofts would be a maximum of 78.56 dBA."<sup>23</sup> The measured maximum ambient noise at the Amp Lofts, according to the Draft EIR, is 86.7 dBA.<sup>24</sup> The City concluded that the haul truck noise impacts, therefore, "would not exceed the ambient maximum noise level already experienced at the Amp Lofts location."<sup>25</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> (1990) 221 Cal. App. 3d 692, 721.

<sup>20</sup> *Id.* at 719.

<sup>21</sup> *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.

<sup>22</sup> VTT 74550 Appeal Staff Report, p. A-8.

<sup>23</sup> *Id.*, p. A-9.

<sup>24</sup> DEIR, IV.H Noise, p. IV.H-17.

<sup>25</sup> Appeal Staff Report, p. A-9.

Closer inspection, however, reveals that the City relied on baseline conditions that are not representative of normal ambient noise in the Project vicinity. The ambient maximum noise levels at the Amp Lofts were measured in July 2017—during construction of the Amp Lofts, which lasted from early 2017 until 2020.<sup>26</sup> During that period, noise levels were elevated as haul trucks were in operation. The relative increase in ambient noise levels from Project construction was therefore assumed to be smaller than they would be when compared to normal baseline conditions that did not have ongoing construction as a baseline.

The City’s assumption that the Project’s noise impacts to residents of the Amp Lofts are “already experienced at the Amp Lofts location” is similarly unsupported because the residents of Amp Lofts did not yet occupy the building when the baseline noise measurements were taken. Noise impacts from the Project’s new haul route will represent a significant increase in existing noise levels to these residents. This impact was not disclosed or mitigated in the EIR. Furthermore, the change in haul routes constitutes a significant revision to the Draft EIR which requires recirculation as required by CEQA Guidelines section 15088.5. The City claims that “since noise generated by haul trucks would be lower than the ambient noise conditions on each of these streets ... the revised haul route would not represent a new significant environmental impact, and would not constitute significant new information requiring recirculation of the EIR.”<sup>27</sup> This conclusion is unsupported due to the City’s reliance on erroneous baseline measurements.

### C. Health Risk

The City continues to assert that it is not required to analyze the human health effects of the Project’s direct or indirect emissions on local sensitive receptors or future Project residents, and that it has followed the guidance of SCAQMD in determining that a health risk analysis is not required. The City’s position is contrary to law. An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>28</sup> These standards apply to an EIR’s analysis of public health impacts of a project.

In *Sierra Club v. County of Fresno*, the Supreme Court affirmed CEQA’s mandate to protect public health and safety by holding that an EIR fails as an informational document when it fails to disclose the public health impacts from air pollutants that would be generated by a development project.<sup>29</sup> The Court held that the EIR for a 942-acre mixed-use development was deficient as a matter of law because it lacked an informational discussion of air quality impacts as they connect to adverse human health effects.<sup>30</sup> As the Court

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<sup>26</sup> See, e.g., <https://urbanize.city/la/post/arts-districts-amp-lofts-heads-towards-finish-line>.

<sup>27</sup> Appeal Staff Report, p. A-9.

<sup>28</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732.

<sup>29</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518–522.

<sup>30</sup> *Id.* at 507–508, 518–522.

explained, “a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.”<sup>31</sup> The EIR failed to comply with CEQA because the public, after reading the EIR, “would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”<sup>32</sup> CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.<sup>33</sup>

The City’s claim that a health risk analysis is not required also runs counter to recent guidance provided by SCAQMD, as pointed out by Dr. Clark. In that recent guidance, SCAQMD stated: “If the Proposed Project generates diesel emissions from long-term construction or attracts diesel-fueled vehicular trips, especially heavy-duty diesel-fueled vehicles, it is recommended that the Lead Agency perform a mobile source health risk assessment.”<sup>34</sup> Here, the City acknowledges that the Project will result in diesel emissions.<sup>35</sup> Therefore, a health risk analysis must be prepared.

### III. CONCLUSION

CREED LA respectfully requests that the Commission uphold its appeal, vacate the Advisory Agency’s certification and adoption of the EIR and approval of the Vesting Tentative Tract Map, and prepare and circulate a legally revised Draft EIR. If a Statement of Overriding Considerations is adopted for the Project, we urge the City to consider whether the Project will result in employment opportunities for highly trained workers.

Sincerely,



Kendra Hartmann

KDH:acp

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<sup>31</sup> *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

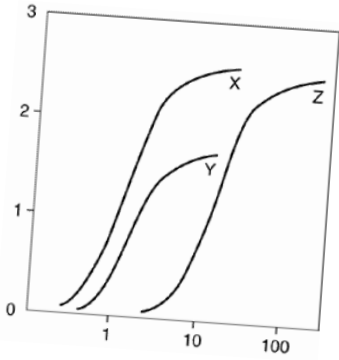
<sup>32</sup> *Id.* at 518. CEQA’s statutory scheme and legislative intent also include an express mandate that agencies analyze human health impacts and determine whether the “**environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.**” (Public Resources Code § 21083(b)(3) (emphasis added).) Moreover, CEQA directs agencies to “take immediate steps to identify any critical thresholds for the **health and safety of the people** of the state and take all coordinated actions necessary to prevent such thresholds being reached.” (Public Resources Code § 21000(d) (emphasis added).)

<sup>33</sup> *Sierra Club*, 6 Cal.5th at 518–522.

<sup>34</sup> Site Plan Consultation for the MA21269. Letter from Lijin Sun, SCAQMD Program Supervisor CEQA IGR to Rocio Lopez, Senior Planner, City of Jurupa Valley, Planning Department. 10/19/2021.

<sup>35</sup> Clark Comments, p. 2.

## **EXHIBIT 2**



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January 25, 2021

Adams Broadwell Joseph & Cardozo  
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South San Francisco, CA 94080

**Attn: Ms. Kendra Hartmann**

**Subject: Comment Letter on Draft Environmental Impact Report (DEIR) for 676 Mateo Street Project, Los Angeles, CA 2017051068**

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Dear Ms. Hartmann:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the 2020 City of Los Angeles Draft Environmental Impact Report (DEIR) 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 is located at 668-678 S. Mateo Street and 669-679 S. Imperial Street (Project Site) within the Central City North Community Plan area of the City in Los Angeles County. Regional access to the area of the Project Site is provided by the Santa Monica Freeway (I-10) via Alameda Street approximately 0.84-mile to the southwest and the Hollywood Freeway (US-101) via E. 7th Street approximately 0.63-mile to the east. The Los Angeles County Metropolitan Transportation Authority (Metro) provides local bus service in the Project Site area. Metro runs multiple bus lines, including local and rapid lines, along E. 6th Street, E. 7th Street, Alameda Street, and Santa Fe Avenue in the area.

The Project Site consists of approximately 44,800 square feet (1.03 acres), and is bounded by Mateo Street to the west, Imperial Street to the east, a one-story warehouse building that has been converted into a small grocery/market use, associated surface parking lot and Jesse Street to the north, and single-story industrial and commercial buildings, associated surface parking lots, and E. 7th Street to the south.

The Project would involve the demolition of the existing warehouse and surface parking lot, and the construction of an up to 197,355-square-foot mixed-use building including up to 185 live/work units, approximately 15,320 square feet of open space for residents, up to 23,380 square feet of art-production and commercial space, and associated parking facilities, resulting in a 4.74:1 FAR. Eleven percent of the units (20 live/work units) would be deed-restricted for Very Low Income households. The proposed building would be up to 116'-0" to the top of the parapet and 110'-0" to the top of the roof (8 above-ground levels) plus three levels of subterranean parking. The Project has been designed to incorporate specific design standards to address the Arts District's unique urban form and architectural characteristics. The Project also proposes the ability to implement an increased commercial option that would provide the Project the flexibility to increase the commercial square footage provided by the Project from 23,380 square feet to 45,873 square-feet within the same building parameters (i.e., 197,355-square-foot, 116'-0" to the top of the parapet and 110'-0" to the top of the roof with eight-aboveground levels achieving a 4.74:1 FAR and three level subterranean parking structure) and, in turn, reduce the overall amount of live/work units from 185 live/work units to 159 live/work units. The Project proposes between 159 and 185 live/work units and between 45,873 and 23,380 square feet of commercial space.

### **General Comments:**

The proposed project is located in a heavily impacted portion of Los Angeles, where there are currently more than 30 projects<sup>1</sup> (not the 20 listed the DEIR) 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. Finally, the DEIR fails to

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<sup>1</sup> <https://downtownla.com/maps/development/in-the-pipeline/arts-district/all>.

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 DEIR Fails to Assess The Cumulative Air Quality Impacts From The Project and Existing/Proposed Projects In The Surrounding Community.**

The DEIR fails to accurately assess the cumulative air quality impacts and existing or proposed projects within the immediate vicinity of the Proposed Project. Rather than quantify emissions and assess the impacts from each existing/proposed project, the City chooses to list the number of “related projects” near the Proposed Project in lieu of the needed quantitative assessment. This qualitative assessment fails to describe the individual and the collective impacts of each of the related projects and fails to provide a numerical threshold against which a determination of cumulative impacts may be assessed.

The method utilized by the City fails to meet the basic requirements for a cumulative air quality analysis as outlined by the SCAQMD’s L.A. CEQA Threshold Guide (2006). A cumulative impact analysis would include a review of the list of related projects and identify those that would have pollutant or odor emissions. Such an analysis would determine the potential impacts of all such projects, together with the proposed project, using the methodology to evaluate the Proposed Project’s pollutant impacts. This significance methodology includes:

- The type, number of pieces, and usage of equipment;
- Rate, quantity, and type of fuel consumption;
- Emission factors, assuming implementation of applicable rules and regulations;
- Type(s) and size(s) of land uses, including location of vehicle driveways and parking facilities;  
and
- The location and usage of equipment or processes that may emit odors.

The City’s air quality cumulative analysis is clearly deficient and must be revised in a Revised Draft Environmental Impact Report (R-DEIR).

**2. The DEIR Fails To Accurately Describe The Number And Types Of Construction Projects In The Vicinity Of The Proposed Project.**

The City’s DEIR fails to accurately describe the number and types of proposed and active projects in the vicinity of the Proposed Project. The City’s analysis includes the following projects (see table below) but fails to include more than 3,000,000 square feet of proposed projects within the vicinity of the Proposed Project (see second table below). The City must update their assessment in a R-DEIR to include the additional projects and determine the cumulative impacts of the projects on the community.

<b>ID</b>	<b>Status</b>	<b>Address</b>	<b>Land Use</b>	<b>Size</b>
1	Under Construction	2051 E. 7 <sup>th</sup> Street 695 S. Santa Fe Avenue	Apartments Retail Restaurant	320 du 15,000 sf 5,000 sf
2	Proposed	826 S. Mateo Street	Apartments Retail Restaurant	90 du 11,000 sf 5,600 sf
3	Proposed	527 S. Colyton Street 1147 E. Palmetto Street	Apartments Retail Production Space	275 du 11,375 sf 11,375 sf
4	Proposed	540 Santa Fe Avenue	Office	89,825 sf
5	Approved	1525 E. Industrial Street	Apartments Creative Office Retail Restaurant	328 du 27,300 sf 6,400 sf 5,700 sf
6	Proposed	2130 E. Violet Street	Office Retail Restaurant	94,000 sf 3,500 sf 4,000 sf
7	Approved	1800 E. 7th Street	Apartments Retail Office Restaurant	122 du 3,245 sf 2,700 sf 4,605 sf
8	Under Construction	520 S. Mateo Street	Apartments Retail Office Restaurant Museum	600 du 15,000 sf 110,000 sf 15,000 sf 10,000 sf



ID	Status	Address	Land Use	Size
9	Approved	668 S. Alameda Street 1562 Industrial Street	Live-Work Apartments Live-Work Office Specialty Retail Office Restaurant Supermarket	475 du 25,200 sf 17,500 sf 7,900 sf 16,300 sf 15,300 sf
10	Under Construction	640 S. Santa Fe Avenue	Office Retail Restaurant	91,185 sf 9,430 sf 6,550 sf
11	Proposed	1206-1278 E. 6th Street 640 S. Alameda Street	Apartments Condominiums Hotel Quality Restaurant High-Turnover Restaurant Retail Office Art Museum Warehouse School	1,305 du 431 du 514 rooms 22,639 sf 22,639 sf 82,332 sf 253,514 sf 22,429 sf 316,632 sf 300 students
12	Proposed	1005 S. Mateo Street	Industrial Park	94,849 sf
13	Approved	2110 Bay Street	Apartments Retail Creative Office	110 du 43,657 sf 113,350 sf
14	Proposed	1101-1129 E. 5th Street 445 S. Colyton Street	Apartments Retail Hotel Quality Restaurant High-Turnover Restaurant Fast-Food Restaurant Art Gallery Design Incubator	129 du 26,979 sf 113 rooms 15,197 sf 13,634 sf 2,888 sf 10,341 sf 3,430 sf
15	Proposed	641 S. Imperial Street	Apartments Retail Office	140 du 7,375 sf 7,375 sf
16	Proposed	2117-2143 E. Violet Street	Apartments Retail Office	347 du 21,858 sf 187,374 sf
17	Proposed	670 S. Mesquit Street	Apartments Retail Hotel Restaurant Event Space Gym Grocery Creative Office	308 du 79,240 sf 236 rooms 89,576 sf 93,617 sf 62,148 sf 56,912 sf 944,055 sf

ID	Status	Address	Land Use	Size
18	Proposed	1024 Mateo Street	Live-Work Apartments Live-Work Office Retail Office Restaurant	106 du 2,250 sf 13,979 sf 92,740 sf 13,126 sf
19	Proposed	2159 E. Bay Street	Office Meeting Space Quality Restaurant High-Turnover Restaurant	202,954 sf 3,235 sf 10,860 sf 10,860 sf
20	Proposed	1100 E. 5 <sup>th</sup> Street	Live-Work Apartments Live-Work Office Office Retail Restaurant	220 du 4,350 sf 17,810 sf 19,609 sf 9,129 sf

Table Notes: sf = square-feet; du = dwelling units

Source: Linscott, Law & Greenspan, Engineers, Transportation Assessment Report, 676 Mateo Street Project, City of Los Angeles, California, February 18, 2020.

### Projects Missing From City's Related Projects List<sup>2</sup>

ID	Status	Address	Land Use	Size
1	Proposed	2 <sup>nd</sup> and Vignes/Challenge Cream Butter Building	Mixed Use	190,165 sf
2	Proposed	2057 East 7 <sup>th</sup> Street	Hotel	Addition of 53,353 sf of new floor area to building
3	Proposed	234 North Central		
4	Proposed	330 South Alameda	Apartment Retail	190,000 sf 22,000 sf
5	Proposed	405 South Hewitt Street	Office Retail	255,000 sf 15,000 sf
6	Proposed	400 South Alameda St	Hotel	Development of 66 hotel rooms
7	Proposed	1211 Wholesale Street (6AM Project)	Hotel	2,439,000 sf
8	Proposed	360 South Alameda (Alameda and 4 <sup>th</sup> Lofts)	Apartments	55,719 sf
9	Proposed	454 Seaton Street	8 Story Building	

<sup>2</sup> <https://downtownla.com/maps/development/in-the-pipeline/arts-district/all>

ID	Status	Address	Land Use	Size
10	Proposed	1000 South Mateo Street	106 live/work Apartments Retail Restaurant	120,000 sf 14,000 sf 13,000 sf
11	Proposed	1340 East 6 <sup>th</sup> Street	193 live/work Apartments	
12	Proposed	1800 East 7 <sup>th</sup> Street	Apartments Commercial	28,999 sf

### **3. The DEIR Fails to Assess The Significant Health Risks As They Relate To The Operational Emissions Of The Proposed Project And The Project Alternative.**

The DEIR fails to address the health risks for residents in adjacent properties (less than 25 meters away from the property boundary) from Toxic Air Contaminants (TACs) that will be released during the operational phase of the project. The City’s air quality analysis ignores the potential cancer risk from diesel exhaust emitted by the project.

Based on the CALEEMOD analyses provided in the Appendix B of the DEIR, the operational phase of the project will emit 0.5046 lbs per day of Fugitive PM<sub>2.5</sub> exhaust (equal to DPM) for the proposed project and 0.4615 lbs per day of Fugitive PM<sub>2.5</sub> exhaust (equal to DPM) for the proposed project alternative. These emissions are equivalent to DPM emissions of 169.5 lbs per year to 184.2 lbs per year. Since the City has not attempted to assess what those impacts would be on the local community and in particular the impacts to the adjacent residences, I have prepared a screening assessment of the operational impacts reported in the CALEEMOD analyses for the project. Using the Bay Area Air Quality Management District’s (BAAQMD) Health Risk Calculator, which calculates the adjusted risk and hazard impacts that can be expected with farther distances from the source of emissions, it is possible to quickly assess the impacts from the project on the adjacent neighbors. The model refines the screening values for cancer risk and PM<sub>2.5</sub> concentrations found in the BAAQMD’s Stationary Source Screening Analysis Tool for permitted facilities which contain diesel internal combustion engines (primary source of DPM). The model is recommended by BAAQMD to assess the impacts from facilities where a comprehensive risk screening assessment has not been completed.

The results are attached as **Exhibit 1 and 2** to this letter. For the preferred project design, operational

emissions of 0.5046 lbs per day of Fugitive PM<sub>2.5</sub> exhaust would result in cancer risks of 568 in 1,000,000, well in excess of BAAQMD's CEQA Air Quality Guidelines threshold of 10 in 1,000,000.<sup>3</sup> Operational emissions of 0.4615 lbs per day of Fugitive PM<sub>2.5</sub> exhaust would result in cancer risks of 519 in 1,000,000, also well in excess of BAAQMD's threshold of 10 in 1,000,000.

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

The City's DEIR 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. CARB<sup>4</sup> defines diesel exhaust as a complex mixture of inorganic and organic compounds that exist 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 based on the numeric threshold for fine particulate matter (PM<sub>2.5</sub>). However, there is notable precedent requiring a quantitative analysis of all the TACs from diesel exhaust in DEIRs submitted for the approval of projects under CEQA. Moreover, the absence of this analysis renders the City's DEIR incomplete. In a 2017 Air Quality Technical Report<sup>5</sup> submitted in support of a Draft

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<sup>3</sup> BAAQMD CEQA Air Quality Guidelines May 2017, p. 2-5.

<sup>4</sup> 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.

<sup>5</sup> 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=>

EIR for the Turk Island Landfill Consolidation and Residential Subdivision<sup>6</sup>, 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. As noted in Comment 3 above, there are substantial health impacts from the operational phase of the project for the adjacent neighbors from the emissions associated with the project that must be addressed. This omission is a continuing flaw that must be addressed by the City. The results should then be presented in a recirculated DEIR.

#### **5. The DEIR Fails To Address The Considerable Increase In Greenhouse Gas (GHG) Emissions From The Existing Site Structures And Fails To Meet The City's Own Commitment To Reduce GHG Emissions From All New Projects**

Since the City does not have a numerical threshold against which projects may be compared, they can use the convoluted logic in the DEIR to claim a level of non-significance for GHG emissions from the project. According to the City, since there is no applicable adopted or accepted numerical threshold of significance for GHG emissions, the methodology for evaluating the Project's impacts related to GHG emissions focuses on its consistency with statewide, regional and local plans adopted for the purpose of reducing and/or mitigating GHG emissions. The City notes that the significance of the Project's GHG emission impacts is not based on the amount of GHG emissions resulting from the Project. This statement alone is a clear indication that the City is not prepared to actually assess what the true impacts of the GHG emissions from the Project will be.

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<sup>6</sup> 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=>

The City's GHG analysis of the proposed project ignores the substantial increase (a factor of 7 to 9) in GHG emissions from the existing site to the proposed project (546 metric tons CO<sub>2</sub>e (MTCO<sub>2</sub>e) for the existing site to an estimated 3,394.35 to 4,444.80 MTCO<sub>2</sub>e for the proposed project).<sup>7</sup> The single greatest factor in the increase in GHG emissions is from mobile sources associated with the project (49%-55%), followed by energy usage (35%-42%).<sup>8</sup>

The City claims that a 26.9 percent reduction via mitigation measures comes from “utilizing low-flow fixtures that would reduce indoor water demand by 20 percent per CalGreen Standards, using water-efficient irrigation systems on-site per City requirements, recycling programs that reduces waste to landfills by a minimum of 75 percent (per AB 341); use of Energy Star® appliances on-site, installation of energy efficient LED lighting, energy efficient glazing and energy efficient window frames; incorporation of the CAPCOA-based land use and site enhancement reduction measures: LUT-1 Increased Density, LUT-3 Increased Diversity, LUT-6 Integrate Below Market Housing Rate<sup>54</sup>, PDT-1 Limit Parking Supply, and PDT-2 Unbundle Parking Costs.”<sup>9</sup>

While the measures appear to provide some measure of reduction they do not address the critical issue of the substantial impact that increasing the GHG emissions 7 to 9 times will have on the environment. The environmental “cost” of the extra 2,900 MTCO<sub>2</sub>e to 3,400 MTCO<sub>2</sub>e is not addressed by the City in its analysis.

## **Conclusion**

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts and that the City should re-evaluate the impacts in a recirculated/revised DEIR.


Sincerely,

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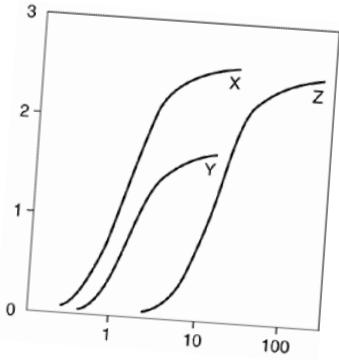
<sup>7</sup> DEIR Section IV.D Greenhouse Gases, p. IV.D-37.

<sup>8</sup> DEIR Section IV.D Greenhouse Gases, p. IV.D-37.

<sup>9</sup> DEIR Section IV.D Greenhouse Gases, p. IV.D-36.



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August 24, 2021

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

**Attn: Ms. Kendra Hartmann**

**Subject: Comment Letter on Final Environmental Impact Report (FEIR) for 676 Mateo Street Project, Los Angeles, CA 2017051068**

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Dear Ms. Hartmann:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the 2021 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 is located at 668-678 S. Mateo Street and 669-679 S. Imperial Street (Project Site) within the Central City North Community Plan area of the City in Los Angeles County. Regional access to the area of the Project Site is provided by the Santa Monica Freeway (I-10) via Alameda Street approximately 0.84-mile to the southwest and the Hollywood Freeway (US-101) via E. 7th Street approximately 0.63-mile to the east. The Los Angeles County Metropolitan Transportation Authority (Metro) provides local bus service in the Project Site area. Metro runs multiple bus lines, including local and rapid lines, along E. 6th Street, E. 7th Street, Alameda Street, and Santa Fe Avenue in the area.



The Project Site consists of approximately 44,800 square feet (1.03 acres), and is bounded by Mateo Street to the west, Imperial Street to the east, a one-story warehouse building that has been converted into a small grocery/market use, associated surface parking lot and Jesse Street to the north, and single-story industrial and commercial buildings, associated surface parking lots, and E. 7th Street to the south.

The Project would involve the demolition of the existing warehouse and surface parking lot, and the construction of an up to 197,355-square-foot mixed-use building including up to 185 live/work units, approximately 15,320 square feet of open space for residents, up to 23,380 square feet of art-production and commercial space, and associated parking facilities, resulting in a 4.74:1 FAR. Eleven percent of the units (20 live/work units) would be deed-restricted for Very Low Income households. The proposed building would be up to 116'-0" to the top of the parapet and 110'-0" to the top of the roof (8 above-ground levels) plus three levels of subterranean parking. The Project has been designed to incorporate specific design standards to address the Arts District's unique urban form and architectural characteristics. The Project also proposes the ability to implement an increased commercial option that would provide the Project the flexibility to increase the commercial square footage provided by the Project from 23,380 square feet to 45,873 square-feet within the same building parameters (i.e., 197,355-square-foot, 116'-0" to the top of the parapet and 110'-0" to the top of the roof with eight-aboveground levels achieving a 4.74:1 FAR and three level subterranean parking structure) and, in turn, reduce the overall amount of live/work units from 185 live/work units to 159 live/work units. The Project proposes between 159 and 185 live/work units and between 45,873 and 23,380 square feet of commercial space.

**Specific Comments:**

**1. The City Has Not Attempted to Quantitatively Assess the Cumulative Impacts of the Project With Other Planned Projects in the Area**

The 676 Mateo project is located less than 2 blocks away from the much larger 670 Mesquit Project and the 6AM Project, both potential sources of significant emissions from the construction and

operational phases.<sup>1</sup> The 670 Mesquit Project is anticipated to include 308 residential units and approximately 1,484,196 sf of office, hotel, restaurant, retail (including grocery and farmer’s market), studio/event/gallery and a potential museum, a gym, and structured parking. The 6AM Project would involve the development of approximately 2,824,245 sf of apartments, condominiums, a hotel, restaurants, retail space, office space, art museum, warehousing, and a school.



Given the size and proximity of the 670 Mesquit Project and the 6 AM Project, the 676 Mateo Project will be situated well within the radius of influence for air pollution, greenhouse gas (GHG) emissions and traffic impacts from the larger projects. The Initial Studies for the 670 Mesquit Project and the 6AM Project each determined that its project would have potentially substantial impacts, including conflicting with or obstructing implementation of the applicable air quality plan, violating air quality standards or contributing to existing or projected air quality violations; would result in cumulative net increases in criteria pollutants; and would expose sensitive receptors to substantial

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<sup>1</sup> City of Los Angeles. 2017. Initial Study, 670 Mesquit Project, Case Number ENV-2017-249-EIR.

City of Los Angeles. 2017. Initial Study, 6AM Project, ENV-2016-3758-EIR

pollutants concentrations.<sup>2</sup> The Initial Study also found that the 670 Mesquit Project would have potentially significant impacts for the generation of GHGs either directly or indirectly.

Construction of the larger 670 Mesquit and 6AM projects will adversely impact the future residents of the 676 Mateo Project and will likely require mitigation measures on-site to reduce those significant impacts. The City's use of the List Method<sup>3</sup> for determining cumulative impacts in the DEIR (the basis of the FEIR) fails to meet the City of Los Angeles CEQA Threshold Guide which requires the City to evaluate the cumulative operational impacts by evaluating:

- The type, number of pieces, and usage of equipment at each project;
- Rate, quantity, and type of fuel consumption;
- Emission factors, assuming implementation of applicable rules and regulations;
- Type(s) and size(s) of land uses, including location of vehicle driveways and parking facilities;
- The location and usage of equipment or processes that may emit odors;
- Modes of transportation, fleet mix, length, number, and type (e.g., work, non-work) of trips, main routes;
- Number of employees per land use category; and
- Vehicle speeds and ambient temperature.<sup>4</sup>

The City's analysis of air quality impacts clearly does not meet the requirements outlined in its own Guidance. The City must update its analysis to include these essential elements.

## **2. The City's Response To Comments Raised About The DEIR's Lack Of Analysis (Dispersion Modeling And Health Risk Analysis) Ignores The Substantial Issue Of Exposing Sensitive Receptors To Air Toxins.**

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<sup>2</sup> City of Los Angeles. 2017. Initial Study, 670 Mesquit Project, Case Number ENV-2017-249-EIR.

City of Los Angeles. 2017. Initial Study, 6AM Project, ENV-2016-3758-EIR

<sup>3</sup> This approach calls for a list of past, present, and probably future projects producing related or cumulative impacts, including, if necessary, those outside the control of the agency. 14 C.C.R. § 15130(b)(1). The DEIR offers a list of 20 other projects in the Project vicinity. DEIR Appendix L.1 Traffic Study, pp. 41–42.

<sup>4</sup> L.A. CEQA Thresholds Guide, 2006, Section B. Methodology to Determine Significance, pp. B.2-5–6.

Since there are no specific emission thresholds based on emission rates or concentrations for toxic air contaminants listed in the SCAQMD’s CEQA Guidance, it is incumbent on the City to show that the amount emitted from the project will not adversely impact the residents of the development across the street from the project. The City’s response to comments on the cumulative analysis assumes that “neither the construction nor operational emissions of the Project would exceed any SCAQMD project-specific threshold, the Project’s contribution to cumulative impacts would not be cumulatively considerable in accordance with SCAQMD methodology. Accordingly, the City’s air quality cumulative analysis is not deficient, and a revised Draft EIR is not necessary for recirculation.”<sup>5</sup> Given that there are no specific emissions thresholds based on emissions rates or concentrations for toxic air contaminants listed in the SCAQMD’s CEQA Guidance, it is clear that the City’s response and analysis are deficient regarding the cumulative impacts from TACs.

**3. The City’s Response to Comments Regarding the Need to Quantify All TACs Released in Diesel Exhaust Missed the Importance for the City to Accurately Assess All Potential Health Risks Associated with the Project.**

In the City’s response to comments, they have misconstrued the issue raised regarding the Turk Island Landfill and the Mateo Street Project. The initial comment was raised to illustrate the number of TACs that are released in diesel exhaust. By not identifying and assessing all TACs, the City would not be meeting its obligation under CEQA to accurately assess the potential health impacts. The use of the Turk Island Landfill EIR was clearly meant to show that other localities have assessed a broad range of TACs and not to assume that emissions from landfills are the same as emissions from housing developments.

**4. The City’s 2019 Air Quality and Health Effects Guidance Does Not Preclude the Use of Other Agencies’ Risk Quantification Tools.**

The City’s response to comments regarding screening analysis performed fails to account for the fact that the CEQA guidance does not preclude the use of other agencies’ risk quantification tools.

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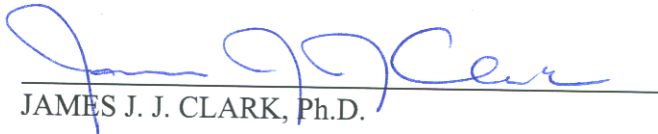
<sup>5</sup> Responses to Comment 6-27, p. II-66.

Screening tools by their nature are meant to point out where issues may be present and the most thorough approach is to perform a detailed analysis that includes the emissions inventory, assignment of emissions across the roadways, dispersion modeling, and a health risk analysis.

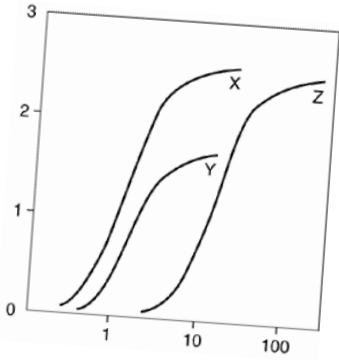
## **Conclusion**

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts and that the City should re-evaluate the impacts in a recirculated/revised DEIR.

Sincerely,



JAMES J. J. CLARK, Ph.D.



October 22, 2021

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**Attn: Ms. Kendra Hartmann**

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**Subject: Response To City Of Los Angeles Department Of City Planning Appeal Report For Draft Environmental Impact Report (DEIR) Of 676 Mateo Street Project, Los Angeles, CA CEQA Number ENV-2016-3691-EIR**

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Dear Ms. Hartmann:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has prepared the following response to the City Planning Commission’s review of the appeal filed regarding the above referenced EIR.

**Responses:**

The City’s analysis of the impacts of toxic air contaminants appears to contradict guidance from SCAQMD regarding CEQA analyses. According to the City’s response (pg A-5), “In determining whether a quantitative health risk assessment of the Project’s construction and operational emissions would be required, the City relied on the guidance of the SCAQMD and the State Office of Environmental Health Hazard Assessment (OEHHA), the regulatory agencies that are legally required to provide the appropriate expertise to determine the likelihood of impacts from construction and operational activities (See Final EIR, page II-75 and II-76), as a screening threshold.” This response contradicts recent guidance from SCAQMD. In its 2021 Site Plan Consultation for the MA21269 to the City of Jurupa Valley, SCAMQD states that “If the Proposed Project generates diesel emissions from long-term construction or attracts diesel-fueled vehicular trips, especially heavy-duty diesel-fueled vehicles, it is recommended that the Lead Agency perform a mobile source health risk assessment<sup>5</sup>.”<sup>1</sup>

According to the City’s analysis of air quality, which used the CalEEMOD model, the construction emission of exhaust PM<sub>2.5</sub> (a surrogate for diesel particulate matter, a known human carcinogen and

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<sup>1</sup> SCAQMD. 2021. Site Plan Consultation for the MA21269. Letter from Lijin Sun, SCAQMD Program Supervisor CEQA IGR to Rocio Lopez, Senior Planner, City of Jurupa Valley, Planning Department. Dated 10/19/2021.

toxic air contaminant) would reach almost 1 pound per day during the initial phase of the construction project.

**Mitigated Construction**

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Year	lb/day										lb/day					
2021	3.0089	63.6555	22.7512	0.1752	5.6285	1.0539	6.4875	2.0200	0.9839	2.8165	0.0000	18,806.0670	18,806.0670	1.6218	0.0000	18,846.6118
2022	30.6373	18.3936	23.9840	0.0608	2.8062	0.6977	3.5040	0.7503	0.6758	1.4262	0.0000	5,921.5086	5,921.5086	0.5014	0.0000	5,934.0447
2023	30.4126	16.5023	23.1013	0.0595	2.8062	0.6080	3.4142	0.7503	0.5887	1.3390	0.0000	5,794.4011	5,794.4011	0.4770	0.0000	5,806.3267
Maximum	30.6373	63.6555	23.9840	0.1752	5.6285	1.0539	6.4875	2.0200	0.9839	2.8165	0.0000	18,806.0670	18,806.0670	1.6218	0.0000	18,846.6118

During the operational phase the exhaust PM<sub>2.5</sub> will reach approximately 0.1 lbs per day.

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category	lb/day										lb/day					
Mitigated	3.2299	12.6807	33.5254	0.1185	9.5193	0.0891	9.6084	2.5474	0.0828	2.6302		12,085.5173	12,085.5173	0.6118		12,100.8112
Unmitigated	3.7542	15.2696	47.4022	0.1762	14.6450	0.1297	14.7747	3.9191	0.1206	4.0397		17,955.1198	17,955.1198	0.8685		17,976.8332

During the operation phase of the project the City’s air quality analysis shows that approximately 3.1% of the vehicles using the Project site would be heavy duty vehicles that use diesel.


**4.4 Fleet Mix**

Land Use	LDA	LDT1	LDT2	MDV	LHD1	LHD2	MHD	HHD	OBUS	UBUS	MCY	SBUS	MH
Apartments Mid Rise	0.545842	0.044768	0.205288	0.119317	0.015350	0.006227	0.020460	0.031333	0.002546	0.002133	0.005184	0.000692	0.000862
Enclosed Parking with Elevator	0.545842	0.044768	0.205288	0.119317	0.015350	0.006227	0.020460	0.031333	0.002546	0.002133	0.005184	0.000692	0.000862
General Office Building	0.545842	0.044768	0.205288	0.119317	0.015350	0.006227	0.020460	0.031333	0.002546	0.002133	0.005184	0.000692	0.000862
High Turnover (Sit Down Restaurant)	0.545842	0.044768	0.205288	0.119317	0.015350	0.006227	0.020460	0.031333	0.002546	0.002133	0.005184	0.000692	0.000862
Regional Shopping Center	0.545842	0.044768	0.205288	0.119317	0.015350	0.006227	0.020460	0.031333	0.002546	0.002133	0.005184	0.000692	0.000862

The City’s assertion that there is no need to perform a health risk analysis is not supported by the guidance from SCAQMD nor the data from the City.

The facts identified and referenced in this letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts and that the City should re-evaluate in a recirculated/ revised DEIR.

Sincerely,

  
 JAMES J. J. CLARK, Ph.D.

Per Ms. Kendra Hartmann's request Menlo Scientific Acoustics, Inc. (MSAI), reviewed the Project Definition (II) chapter as well as the Noise Environmental Impact Analysis (IV.H) and the Transportation/Traffic sections of the subject Draft Environmental Impact Report. The discussion below provides a summary of our review. The items discussed below indicate some of the ways in which the DEIR does not adequately describe the project noise impacts, presents the impression the impacts are not significant, and omits potential noise sources and their impacts.

### **I. The DEIR Fails to Provide an Adequate Project Definition**

The DEIR fails to provide the details necessary to review the Project's impacts and assess the mitigation needed to minimize them. The project description lacks information critical for the reviewing public to meaningfully assess the DEIR's conclusions in several ways, including:

- a. DEIR Section 2, *Environmental Setting*, includes in its descriptions and figures makes brief mention of the multi-story residential buildings to the west across Mateo Street and, to a much lesser extent, the multi-story residential building to the east across Imperial Street. The description of the Project site's surroundings is an inadequate baseline from which to analyze Project impacts. The impacts during construction for residential units above ground level (note all units are above ground level) in the neighboring buildings, despite a mitigation offered by an eight-foot-high barrier, is neither disclosed nor discussed. This impact is substantial.
- b. DEIR Section 4, *Construction*, admits that the project will require the net export of approximately 74,500 cubic yards of soil. No mention is made of the location for the staging of the haul trucks and the size of the haul trucks to be used. This information is necessary to analyze the noise impacts from the haul trucks' daily trips on the adjacent residential units.
- c. DEIR Section 6, *Discretionary Actions and Approvals*, notes the anticipated request for approval to serve a full line of alcoholic beverages on-site. This could have significant implications for the Project's operational noise impacts, none of which are disclosed or discussed. These potential impacts include those resulting from boisterous patrons in open seating areas; noise from the interior of an establishment if it has windows and doors that open to the outside; noise impacts from sound systems for recorded or live sound. The noise level from these can exceed the criteria in LAMC Chapter 12.08, Noise Control. The DEIR, however, does not include a description of any of these potentialities.

### **II. The Existing Baseline Established by the Noise Impact Analysis is Inadequate and the Data Presented to Analyze Noise Impacts is Inaccurate and Incomplete**

It is necessary to establish an accurate existing baseline in order to estimate noise impacts as accurately as possible. The DEIR, however, uses imprecise and inadequate methods to establish a baseline. Any analysis that follows is therefore flawed.

For example, Table IV.H-7 in DEIR Section IV.H Noise presents data from two noise measurements taken at the Project site on one day. Absent from the DEIR or its analyses are details critical to support its conclusions regarding the existing baseline at the Project site. The time(s) of day, for example, at which these measurements were taken is not disclosed. No description of the environmental conditions in the vicinity, such as the current or former presence of construction and other activities near the measurement locations or other environmental conditions such as wind that could affect the noise baseline measurements. The DEIR's baseline ambient noise measurements fail to establish existing noise levels at relevant noise-sensitive receptors in the vicinity of the Project site and the DEIR likewise fails to assess the temporary increase in ambient noise levels at those receptors accurately.



Furthermore, the DEIR's methodology is unreliable as it appears to conflate values used to measure different sound levels. For example, data presented in Table IV.H-9 is confusing and misleading. Values in the column labeled "Estimated Peak Construction Noise Levels (dBA Leq)" appear to refer both to "peak" and " $L_{eq}$ ." These values, however, measure different energy noise levels. "Peak sound level" is defined by ANSI AS S1.1, *Acoustical Terminology*, as the "greatest absolute value of instantaneous sound pressure within a specified time interval within a stated time interval to the square of the reference value for sound pressure." *Equivalent continuous sound level, or Leq*, meanwhile, is defined as "Ten times the logarithm to the base ten of the ratio of *time-mean-square* frequency-weighted sound pressure signal, during a stated time interval T, to the square of the reference value for sound pressure," or the average acoustic energy content of noise for a stated period of time. A peak level in a given time period is always greater than an average sound level for a given time period. These inconsistencies and errors make a precise analysis of noise impacts impossible.

Additionally, Page IV.H-27 states that "peak construction noise levels at all sensitive receptors would be below the 75 dBA construction noise threshold defined by Section 41.40 of the LAMC." Section 41.40, however, makes no mention of a noise threshold of 75 dBA.<sup>a</sup> Further, peak levels are not defined nor referenced in LAMC Chapter XI, *Noise Regulation*. Sound level is defined in section 111.01. *Definitions*, sub section (k): "'Sound Level' (Noise level) in decibels (dB) is the sound measured with the 'A' weighting and slow response by a sound level meter; except for impulsive or rapidly varying sounds, the fast response shall be used."<sup>b</sup> Substantial evidence shows that the threshold chosen by the City is neither accurate nor adhered to by Project construction. Even if the threshold were correct, noise impacts from Project construction will exceed it regularly.

### **III. The DEIR's Conclusions Regarding Noise Impacts Are Inaccurate and Underestimated**

CEQA does not set a uniform standard for determining the significance of a project's noise impacts. Lead agencies may select their own method but must support the method with evidence and analysis. The City's threshold, found in the Los Angeles Municipal Code Section 112.05, is neither appropriate nor complied with by Project construction noise.

The estimated peak construction noise levels at the nearest sensitive receptors, the National Biscuit Company Lofts and the Toy Factory Lofts, is projected to be 66.4 dBA.<sup>c</sup> This analysis is not supported by substantial evidence for several reasons. First, the analysis did not specify the construction equipment used in the estimation, a crucial datapoint.<sup>d</sup> Secondly, the analysis uses a threshold set forth in Los Angeles Municipal Code Section 112.05, which "prohibits any powered equipment or powered hand tool from producing noise levels that exceed 75 dBA at a distance of 50 feet from the noise source within 500 feet of a residential zone."<sup>e</sup> The distance of the haul trucks route to the sensitive receptors, however, is less than 50 feet. For incoming haul trucks, the distance to the Biscuit Company building will be approximately 30 feet, while outgoing trucks will pass about 15 feet from the building.<sup>f</sup> The noise levels, therefore, will be considerably higher—4.4 dBA higher for incoming trips and 10.4 dBA higher for outgoing.

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<sup>a</sup> [https://codelibrary.amlegal.com/codes/los\\_angeles/latest/lamc/0-0-0-128777#JD\\_41.40](https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-128777#JD_41.40)

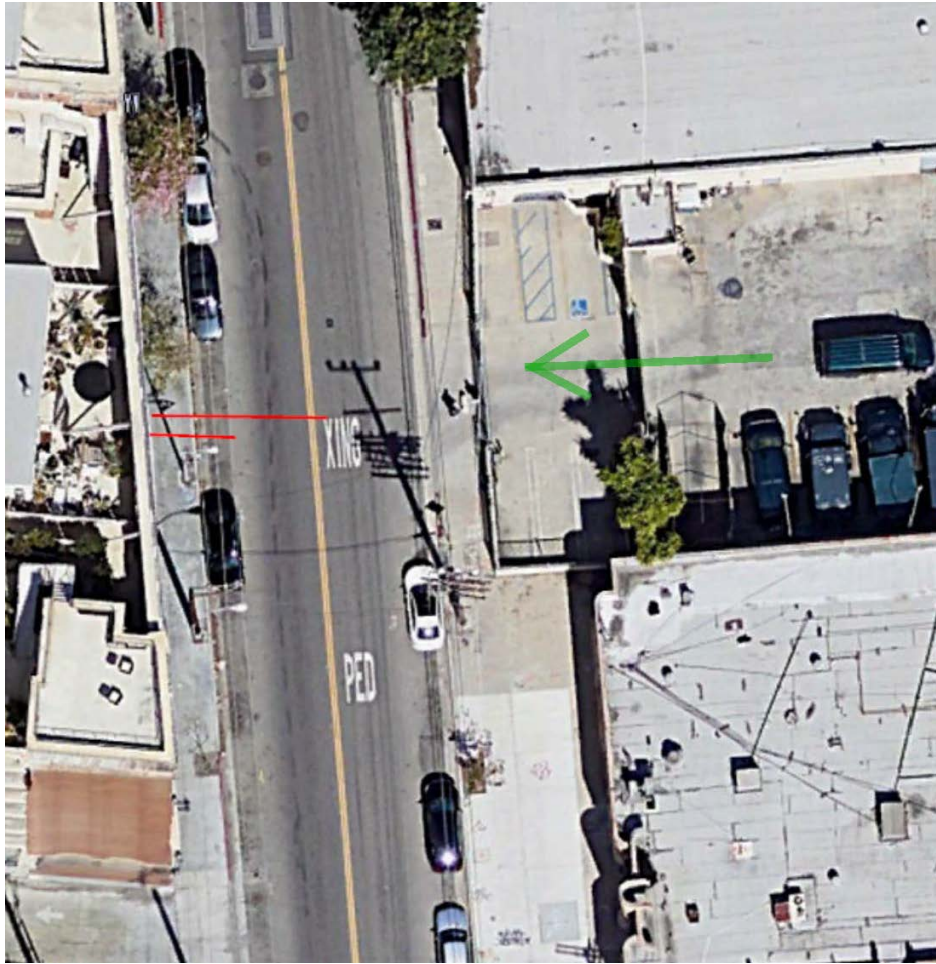
<sup>b</sup> Per ANSI/ASA S1.1 section 3.12 the slow response time period is 1000 ms (one thousand milli-seconds = 1 second) and the fast response time period is 125 ms (1/8 second). For time-varying noise the shorter the time period the greater the measured sound level and the longer the time period the more the sound level decreases.

<sup>c</sup> DEIR Section IV.H Noise, Table IV.H-9, p. IV.H-27.

<sup>d</sup> [https://www.fhwa.dot.gov/environment/noise/construction\\_noise/handbook/handbook09.cfm](https://www.fhwa.dot.gov/environment/noise/construction_noise/handbook/handbook09.cfm).

<sup>e</sup> [https://codelibrary.amlegal.com/codes/los\\_angeles/latest/lamc/0-0-0-128777#JD\\_112.05](https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-128777#JD_112.05).

<sup>f</sup> See Google Earth image, below.



A considerable increase in noise levels such as these for each haul truck trip equates to an exponentially more significant impact when considering the number of trips per day and the hours during which they are completed. If haul trucks will make, as stated, 142 trips per day (71 incoming and 71 outgoing)<sup>§</sup> from 7 am to 10 pm (15 hours) then:

- 4.7 incoming trips/hr (every 12.8 minutes) will be 80.4 dBA
- 4.7 outgoing trips/hr (every 12.8 minutes) will be 86.4 dBA

So, each trip can exceed the 75 dBA criteria every 6.4 minutes!

If there will be 71 trips in and out/day from 7 am to 5 pm (10 hours) then:

- 7.1 incoming trips/hr (every 7.1 minutes) will be 80.4 dBA
- 7.1 outgoing trips/hr (every 7.1 minutes) will be 86.4 dBA

So, each trip can exceed the 75 dBA criteria every 3.6 minutes!

Since the trucks will be accelerating and decelerating, the levels can be higher than those noted above and the time of exceedance depends on the time it takes for each truck to arrive and depart. Further, as noted above, if the truck noise levels found in Table IV.H-8 are underestimated, the noise impacts will be even greater. If the number of trips per day is greater than the 71 incoming and outgoing that the DEIR projects, noise impacts will be more frequent and could become almost continuous.

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<sup>§</sup> DEIR Section IV.H Noise, p. IV.H-28.

#### **IV. Mitigation of Construction Noise is Inadequate**

Lastly, the measures proposed by the DEIR to mitigate noise impacts are woefully inadequate. In order to help minimize adverse noise impacts at the National Biscuit Company and Toy Factory lofts, an eight-foot-high barrier will be installed along the western boundary of the Project site during demolition and excavation/grading. This barrier, which stands at a much lower height than any residential units in both buildings, will provide no mitigation. It will neither dampen noise at the site due to its low profile, nor will it provide residents at either building protection from the noise of haul trucks as the truck route will pass down Mateo Street with no barrier or other mitigation between the trucks and the residential units.

Furthermore, nowhere are impacts from music or loud (and potentially inebriated) patrons on the ground discussed. Permits for live music or music playback on or at the roof area pool and spa, yoga deck, and private terraces are anticipated, but the impacts of these is neither disclosed nor discussed in the DEIR. Music, especially the low frequency sounds present in many music genres, can be a nuisance and impact the residential units in close proximity. Music can impact the interior of the residences since windows do not have good low-frequency attenuation. Potential mitigation measures for reducing these impacts can include limiting music or sound levels, including not allowing music at the pool and spa, yoga deck, and private terraces, as well as retrofitting windows at impacted existing residential properties, similar to that implemented at LAX.

Please contact me to discuss at your convenience. Thank you for the opportunity to be of service.

Sincerely,  
MENLO SCIENTIFIC ACOUSTICS, INC.



Neil A. Shaw, FASA, FAES

NAS:sk

# MENLO SCIENTIFIC ACOUSTICS, INC.

Consultants in Acoustics and Communication Technologies

23 August 2021

Ms. Christina Caro

**Adams Broadwell Joseph & Cardozo**

01 Gateway Boulevard, Suite 1000

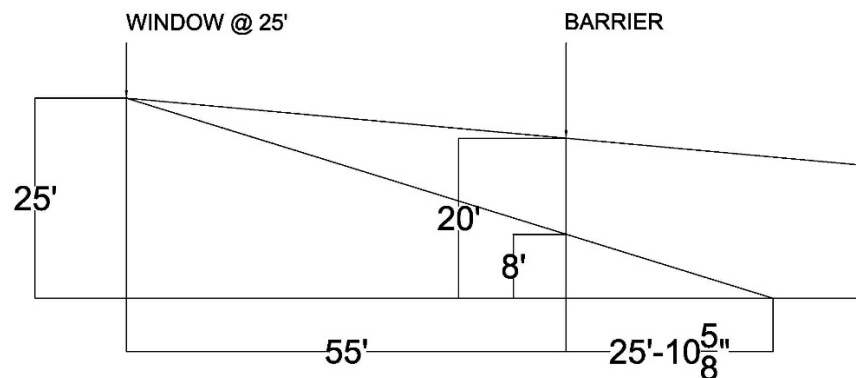
South San Francisco, CA 94080

Subject: **Rebuttal to Responses to Comments on 676 Mateo Street Project  
ENV-2016-3691-EIR - Noise Impacts**

Per Ms. Kendra Hartmann's request, Menlo Scientific Acoustics, Inc., (MSAI), reviewed the Responses to Comments on the 676 Mateo Street Project by the City of Los Angeles. The discussion below provides a summary of our review. In most cases, the responses divert from specific issues raised in my comments, are non-responsive, or use inaccurate statements to rebut substantial evidence of potentially significant, unmitigated noise impacts.

## 1. Response to Comment No. 3-2 Response Lord Letter

The Response first presents information that is misleading, incorrect, and invalid. An 8' high barrier will not block line of sight to the second story window at 25' elevation for any activities beyond 25'-10" from the barrier, see figure below. As noted in the Response Figure 1, a 20' high barrier would provide some mitigation to 2<sup>nd</sup> floor residences but not for higher floor and not for sources further from the barrier.



Note the characterization that a 20' high sound curtain barrier would offer 20-30 dBA of transmission loss compared to 10-20 dBA of transmission loss for a plywood barrier is incorrect and a mischaracterization of the barrier attenuation that can be obtained from a barrier with a direct line of sight between the source and a receiver.

The quoted transmission losses could be for transmission loss through the material alone, but not for a barrier using either of these materials. From the FHWA Noise Barrier Design Handbook<sup>a</sup> Section 3.4 "Noise barriers reduce the sound which enters a community from a busy highway by either absorbing it...transmitting it...reflecting it back...or forcing it to take a longer path." For this situation, there is no barrier attenuation as the receivers have a direct line of sight to the many sources.

<sup>a</sup> [https://www.fhwa.dot.gov/environment/noise/noise\\_barriers/design\\_construction/design/design03.cfm](https://www.fhwa.dot.gov/environment/noise/noise_barriers/design_construction/design/design03.cfm)

The Response notes this and states: “Therefore, an alternate mitigation strategy was considered that could address potentially significant noise impacts at all units in the Biscuit Company Lofts and Toy Factory Lofts buildings that

face the Project Site, including those on the third floor and above for which inclusion of any form of perimeter sound barrier would be infeasible.” The proposed solution, in MM NOI-2 is a proposal for a noise mitigation analysis and plan. This plan, which could define “any additional temporary sound barriers, specific equipment mix, noise mufflers and buffer distances for specific pieces of equipment, and/or other measures that would reduce the effect of construction noise on the above ground-floor units at the Biscuit Company Lofts and Toy Factory Lofts to less than a 5-dBA increase above ambient levels,” may in fact not provide adequate mitigation for the substantial impacts due the project – it is kicking the mitigation can down the road – and so the substantial impact may, and probably will, not be mitigated.

Note the calculated barrier attenuation for an 8’ high barrier, with a source 10’ above the ground, and a receiver 25’ above the ground and 55’ distant from the barrier, is negligible, irrespective of source distance since the attenuation is solely to the source-receiver distance.

## **2. Response to Comment No. 3-3 Response Lord Letter**

The Response moves the haul truck route and staging to Imperial Street. This just moves the impact to the AMP and other residences on Imperial and provides no mitigation to this substantial impact.

## **3. Response to Comment No. 6-6 Response Shaw Letter**

Moving the haul truck route and staging to Imperial Street will just move the substantial impact to the AMP and other residences on Imperial Street. There will still be about one truck every 6 minutes and the distance from trucks to residences will still be small.

## **4. Response to Comment No. 6-7 Response Shaw Letter**

The Response puts the responsibility for mitigation of these impacts on the City of Los Angeles, is reactive after an incident rather than proactive, and so does not address the impact.

## **5. Response to Comment No. 6-8 Response Shaw Letter**

See 4, above. These potential impacts were not and are not addressed.

## **6. Response to Comment No. 6-9 Response Shaw Letter**

The comment noted “An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels.” Comments 6-6 to 6-42 present items that are not fully disclosed nor is effective mitigation presented in the Responses.

## **7. Response to Comment No. 6-10 Response Shaw Letter**

The Response appears to say the whatever time period and whatever time of day the ambient noise measurement is made is compliant with the City of Los Angeles CEQA guidelines. However, the ambient noise measurement must accurately characterize the ambient noise such that noise generated over the course of the day can be fully assessed with respect to the impacts from a project. Therefore, the Response does not justify or validate the ambient noise measurements used and all subsequent analysis and projections are suspect.

## **8. Response to Comment No. 6-11 Response Shaw Letter**

**MENLO SCIENTIFIC ACOUSTICS, INC.**

See 2 and 3, above.

**9. Response to Comment No. 6-12 Response Shaw Letter**

The Response appears to note only the concrete saw has an impact, while ignoring other equipment that will be closer to sensitive receptors than the reference distance for noise from the equipment, and then only the impact when used near Mateo Street. This ignores the impact from the saw and other equipment, when closer to receivers than the reference distance, not only on the receivers on Mateo Street, but also on receivers on Imperial Street. The Response does not fully address the substantial impact from this equipment.

**10. Response to Comment No. 6-37 Response Shaw Letter**

The Response says that only the substantial impact from the concrete saw need be considered and all other sources can be ignored. The Response does not fully address the substantial impact for this equipment.

**11. Response to Comment No. 6-38 Response Shaw Letter**

See 2, 3, and 8, above.

**12. Response to Comment No. 6-39 Response Shaw Letter**

See 4, above.

**13. Response to Comment No. 6-40 Response Shaw Letter**

See 7, above

**14. Response to Comment No. 6-41 Response Shaw Letter**

The Response ignores the substantial impact when equipment is closer to a sensitive receiver than the noise reference distance.

See 2, 3, and 8, above.

**15. Response to Comment No. 6-42 Response Shaw Letter**

See 1, and 10, above.

**16. Response to Comment No. 6-43 Response Shaw Letter**

See 4 and 12, above.

Thus, the Responses do not fully address or answer the Comments noted above, and the impacts discussed are significant and unmitigated.

Sincerely,  
MENLO SCIENTIFIC ACOUSTICS, INC.



Neil A. Shaw, FASA, FAES

NAS:sk

26 October 2021

Ms. Christina Caro  
**Adams Broadwell Joseph & Cardozo**  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080

Subject: **Rebuttal to Staff Report Responses to Appeal of 676 Mateo Street Project**  
**ENV-2016-3691-EIR - Noise Impacts**

## **1. Methodology for Measuring Ambient Noise**

The Staff Report notes “Ambient Noise,” according to LAMC 111.01(a), is “the composite of noise from all sources near and far in a given environment, exclusive of occasional and transient intrusive noise sources and of the particular noise source or sources to be measured. Ambient noise shall be averaged over a period of at least 15 minutes at a location and time of day comparable to that during which the measurement is taken of the particular noise source being measured.”

Average noise is understood to be the equivalent continuous sound level,  $L_{eq}$ , which is the time-averaged sound level over a specified time period. Noise generated over the course of an entire day must be fully assessed to accurately characterize ambient noise and evaluate a project’s impacts. The Report appears to conflate ambient (or average) noise levels with maximum noise levels, and fails to justify or validate its noise measurements, making all subsequent analysis and projections suspect.

## **2. Haul Truck Noise and Mitigation Measures**

- The Report does not account for the number of daily haul truck trips expected during construction. The analysis measures the “instantaneous noise impact” of one truck passing by, thereby underestimating true impacts that will be felt during construction. It compares this noise level with the maximum level previously measured at Amp Lofts during the construction there, creating the illusion of lower impacts.
- Impacts are measured against the “Existing Ambient Noise Levels” listed in DEIR Table IV.H-7. The primary sources of noise measured are listed as “Traffic and hauling activity (i.e., increased number of haul trucks traveling around Project Site) along Imperial Street.” This indicates that the measurement was taken during construction activity at the location. The AMP Lofts, which were being constructed at the time the noise levels were taken, and the data presented do not reflect the typical noise levels at the location without construction. It is more likely that the noise levels are similar to the lower levels presented for Location 1. The impact of the haul trucks will exceed the ambient levels for every trip, and the frequency of these exceedances is not discussed.
- The Project’s noise impacts will likely be significant and unmitigated. The Report indicates that construction noise will be mitigated via “source control measures” and will be forthcoming when a contractor is selected. What these measures will be are not disclosed so their effectiveness cannot be evaluated.

Sincerely,  
MENLO SCIENTIFIC ACOUSTICS, INC.



Neil A. Shaw, FASA, FAES

NAS:sk

**Applicant Copy**  
 Office: West LA  
 Application Invoice No: 77245

City of Los Angeles  
 Department of City Planning



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## City Planning Request

NOTICE: The staff of the Planning Department will analyze your request and accord the same full and impartial consideration to your application, regardless of whether or not you obtain the services of anyone to represent you.

This filing fee is required by Chapter 1, Article 9, L.A.M.C.

If you have questions about this invoice, please contact the planner assigned to this case. To identify the assigned planner, please visit <https://planning.lacity.org/pdiscaseinfo/> and enter the Case Number.

**Receipt Number:211221E3D-82BB67DC-4305-4302-97EC-91D188212048, Amount:\$109.47, Paid Date:12/21/2021**

Applicant: ADAMS BROADWELL JOSEPH & CARDOZO - HARTMANN, KENDRA ( 650-5891660 )
Representative:
Project Address: 668 S MATEO ST, 90021

**NOTES:**

CPC-2016-3689-GPA-VZC-HD-MCUP-DB-SPR-1A			
Item	Fee	%	Charged Fee
Appeal by Aggrieved Parties Other than the Original Applicant *	\$89.00	100%	\$89.00
<b>Case Total</b>			<b>\$89.00</b>

Item	Charged Fee
*Fees Subject to Surcharges	\$89.00
Fees Not Subject to Surcharges	\$0.00
<b>Plan &amp; Land Use Fees Total</b>	<b>\$89.00</b>
<b>Expediting Fee</b>	<b>\$0.00</b>
<b>Development Services Center Surcharge (3%)</b>	<b>\$2.67</b>
<b>City Planning Systems Development Surcharge (6%)</b>	<b>\$5.34</b>
<b>Operating Surcharge (7%)</b>	<b>\$6.23</b>
<b>General Plan Maintenance Surcharge (7%)</b>	<b>\$6.23</b>
<b>Grand Total</b>	<b>\$109.47</b>
<b>Total Invoice</b>	<b>\$109.47</b>
<b>Total Overpayment Amount</b>	<b>\$0.00</b>
<b>Total Paid</b> (this amount must equal the sum of all checks)	<b>\$109.47</b>

Council District: 14  
 Plan Area: Central City North  
 Processed by MCCOY, NOAH on 12/21/2021

Signature: \_\_\_\_\_



**Building & Safety Copy**  
 Office: West LA  
 Application Invoice No: 77245

City of Los Angeles  
 Department of City Planning



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