



**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: VTT-83288-1A;ENV-2020-6829-MND;CPC2020-6828-GPA-ZC-HD-SPR-MCUP

Project Address: 635 - 657 Mesquit Street; 1585 East Jesse Street; 632 - 648 Santa Fe Avenue

Final Date to Appeal: 04/22/2022

#### 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 Darien Key

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: dkey@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): Darien Key

Company: 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: dkey@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

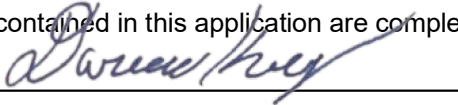
If Yes, list the condition number(s) here: All conditions approved by the City Planning Commission

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: 04-21-2022

**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 COMMUNITIES (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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*\*Not admitted in California.  
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April 21, 2022

### **VIA ONLINE SUBMISSION**

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

### **VIA EMAIL**

Stephanie Escobar, Planning Assistant ([stephanie.escobar@lacity.org](mailto:stephanie.escobar@lacity.org))  
Heather Bleemers, Senior City Planner ([heather.bleemers@lacity.org](mailto:heather.bleemers@lacity.org))  
Oliver Netburn, City Planner ([oliver.netburn@lacity.org](mailto:oliver.netburn@lacity.org))  
Vince Bertoni, Director of Planning ([vince.bertoni@lacity.org](mailto:vince.bertoni@lacity.org))

**Re: Appeal of City Planning Commission Denial of Appeal of Vesting Tentative Tract Map for the 655 Mesquit Project, Case Number: VTT-83288; Related Cases CPC-2020-6828-GPA-ZC-HD-SPR-MCUP / ENV-2020-6829-EAF**

Dear Councilmembers, Planning Department, Ms. Escobar, Ms. Bleemers, Mr. Netburn, Mr. Bertoni:

On behalf of the Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA"), we submit this appeal of the City Planning Commission's ("CPC") January 27, 2022 denial of CREED LA's appeal of the Advisory Agency's approval of the Vesting Tentative Tract Map No. 83288 (map date-stamped September 5, 2021) ("VTTM") for the 655 Mesquit Project, and to be located at 640-657 South Mesquit Street, 1585 East Jesse Street, and 640-648 South Santa Fe Avenue, Case Number: VTT-83288; Related Cases CPC-2020-6828-GPA-ZC-HD-SPR-MCUP / ENV-2020-6829-EAF (collectively, "Project"), proposed by 655 Mesquit, LLC ("Applicant").

The Project proposes to redevelop a surface parking lot on the existing 640 South Santa Fe Avenue site ("Project Site") into a 14-story commercial building with approximately 188,954 square feet of floor area comprised of 184,629 square feet of office uses and approximately 4,325 square feet of ground floor commercial

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uses.<sup>1</sup> As approved by the Advisory Agency, the VTTM authorized the subdivision of five (5) parcels into eight (8) lots, including one (1) master ground lot and seven (7) airspace lots, in the Central City North Community Plan at 640-657 South Mesquit Street, 15885 East Jesse Street, and 640-648 South Santa Fe Avenue.<sup>2</sup>

On September 22, 2021, the Advisory Agency conducted a public hearing to consider the VTTM. On September 23, 2021, the Department of City Planning issued a Mitigated Negative Declaration (“MND”) for the Project (MND No. ENV-2020-6829-MND) pursuant to the California Environmental Quality Act<sup>3</sup> (“CEQA”).<sup>4</sup> The public comment period on the MND began on September 23, 2021 and ended on October 13, 2021.<sup>5</sup> CREED LA submitted written comments and expert comments on the MND on October 13, 2021 (“MND Comments”) explaining that the MND failed to comply with CEQA and land use regulations.<sup>6</sup>

On December 22, 2021, the Advisory agency issued a Letter of Determination (“LOD”) approving the VTTM.<sup>7</sup> The LOD includes CEQA findings, Subdivision Map Act findings, and states that the Advisory Agency considered and adopted the MND.<sup>8</sup> However, the Advisory Agency did not consider the public comments filed on the MND, which postdated the Advisory Agency hearing on the VTTM, and there were no responses to MND comments contained in the Advisory Agency’s LOD.

On December 29, 2021, CREED LA filed an appeal of the Advisory Agency’s decision to the CPC.<sup>9</sup> The CPC considered CREED LA’s appeal at a January 27, 2022 hearing, along with a second hearing related to the CPC’s approval of the

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<sup>1</sup> City of Los Angeles Department of City Planning, Mitigated Negative Declaration: 655 Mesquit Street Project Case Number: ENV-2020-6829-EAF, CPC-2020-6828-GPA-ZC-HD-SPR-MCUP (September 2021) <https://planning.lacity.org/odocument/4ff91485-df08-4bc2-8f02-87f9c4255ab1/ENV-2020-6829.pdf>.

<sup>2</sup> LOD, p. 1.

<sup>3</sup> Pub. Res. Code (“PRC”) §§ 2100 et seq.; 14 Cal. Code Regs. (“CCR”) §§ 15000 et seq.

<sup>4</sup> LOD, p. 12.

<sup>5</sup> [https://planning.lacity.org/odocument/1449ad71-431a-42d9-a6ea-dec20e3a330f/Pub\\_092321.htm](https://planning.lacity.org/odocument/1449ad71-431a-42d9-a6ea-dec20e3a330f/Pub_092321.htm) (Public Notice re Intent to Adopt MND for 655 Mesquit Project).

<sup>6</sup> See **Exhibit 1**, 10/13/21 CREED LA Comments on the 655 Mesquit Project; Case Number: ENV-2020-6829-EAF CPC-2020-6828-GPA-ZC-HD-SPR-MCUP.

<sup>7</sup> See 12/22/21 Letter of Determination VTTM No. 83288 (“LOD”), available at <https://planning.lacity.org/pdiscaseinfo/document/MTYwMzk0/1823a02c-5d95-4003-95c4-258347c32f18/pdd>.

<sup>8</sup> LOD, pp. 12-17.

<sup>9</sup> See **Exhibit 2**, CREED LA Appeal Application and Comments on the 655 Mesquit Project; Case Number: ENV-2020-6829-EAF CPC-2020-6828-GPA-ZC-HD-SPR-MCUP. L5691-007acp

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Project's remaining entitlements.. Prior to the hearing CREED LA filed additional comments in response to the City's staff report recommending denial of the appeal.<sup>10</sup>

On April 12, 2022, following the January 27, 2022 CPC hearings, the City released two separate LODs, one denying CREED LA's Appeal of the Advisory Agency approvals, and a second approving the Project's remaining entitlements.<sup>11</sup> The City Council hearing is tentatively scheduled to consider the Project's remaining legislative entitlements at a date to be determined.

This letter accompanies CREED LA's appeal the CPC's denial of CREED LA's appeal of the Advisory Agency's approvals of the Project (LOD VTT-83288-1A, 4/12/22). CREED LA is concurrently filing a separate appeal of the CPC's approval and recommendation report regarding the Project's remaining entitlements (LOD CPC-2020-6828-GPA-ZCHD-SPR-MCUP, 4/12/22)

This letter supplements CREED LA's Appeal Application filed concurrently herewith. In accordance with City requirements, this appeal is also accompanied by an appeal filing fee, and a copy of the LOD being appealed. The appeal is based on each of the reasons set forth herein and in the attached and referenced exhibits. CREED LA reserves the right to supplement this appeal and the reasons therefore at the hearing on the appeal and at any subsequent City hearings and proceedings related to the Project.<sup>12</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

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<sup>10</sup> See **Exhibit 3**, 1/24/22 CREED LA Appeal Comments on the 655 Mesquit Project; Case Number: ENV-2020-6829-EAF CPC-2020-6828-GPA-ZC-HD-SPR-MCUP.

<sup>11</sup> See 4/12/22 Letter of Determination VTTM No. 83288 ("LOD"), available at <https://planning.lacity.org/pdiscaseinfo/document/MjA3MTc0/1823a02c-5d95-4003-95c4-258347c32f18/pdd>; See 4/12/22 Letter of Determination CPC-2020-6828-GPA-ZC-HD-SPR-MCUP ("LOD"), available at <https://planning.lacity.org/pdiscaseinfo/document/MjA3MTg0/1823a02c-5d95-4003-95c4-258347c32f18/pdd>

<sup>12</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.

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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.

## **I. REASONS FOR APPEAL**

CREED LA appeals all actions taken by the CPC at the January 27, 2022 hearing, and described in the LOD, related to CREED LA's appeal of the Advisory Agency decision regarding the Project. The reasons for this appeal are set forth in the attached comments and exhibits, including CREED LA's MND comment letter dated October 13, 2021, and the expert comments of air quality and hazards expert James Clark, Ph.D, CREED LA's December 29, 2021 appeal, and January 24, 2022 comments to the CPC. Reasons for the appeal include violations of CEQA, State and local land use codes, and of the Subdivision Map Act. We incorporate by reference all comments included in Exhibits 1-3. A brief summary of issues is below. CREED LA reserves the right to supplement this appeal at later hearings and proceedings on the Project.<sup>13</sup> CREED LA respectfully requests that the City Council consider all of our comments on the Project in their entirety in responding to this appeal.

### **A. An EIR is Required Because there is Substantial Evidence Supporting a Fair Argument that the Project Will Have Significant, Unmitigated Adverse Environmental Impacts**

A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may

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<sup>13</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.



have a significant environmental impact.<sup>14</sup> “[S]ignificant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.”<sup>15</sup> An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.”<sup>16</sup> Substantial evidence, for purposes of the fair argument standard, includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”<sup>17</sup>

CREED LA’s attached MND Comments, including the comments of its experts, presented direct and substantial evidence to the City raising a fair argument that the Project will have significant impacts on air quality, GHG emissions, land use, noise, and hazardous materials that are not fully disclosed or mitigated by the MND. An EIR must be prepared to fully disclose and analyze these impacts and mitigate these significant impacts to less than significant levels.

**B. The CPC’s Action in Upholding the Advisory Agency’s CEQA Findings Was an Abuse of Discretion Because the Findings Were Premature and Unsupported**

The LODs includes CEQA findings which state that the Advisory Agency considered and adopted the MND, and that the Agency found that its findings reflected the independent judgment of the lead agency and determined that the Project would not have a significant effect upon the environment provided the potential impacts are mitigated to a less than significant level, as described in the MND.<sup>18</sup> However, as explained in CREED LA’s original appeal, the Advisory Agency’s CEQA findings and purported “adoption” of the MND were premature, because the City had not yet considered or responded to comments filed on the MND, failed to require an EIR for the Project, and the majority of the Project’s entitlements had not been considered or approved by the CPC or City Council at the time the Advisory Agency’s findings were made.

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<sup>14</sup> PRC § 21151; 14 CCR § 15064(f); *Citizens for Responsible Equitable Env’tl Dev. v. City of Chula Vista* (“CREED”) (2011) 197 Cal.App.4th 327, 330-31; *Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319 (“CBE v. SCAQMD”).

<sup>15</sup> PRC § 21068; 14 CCR § 15382; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1581.

<sup>16</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.

<sup>17</sup> PRC § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.

<sup>18</sup> LOD, p. 12.

It is well-settled that certification or adoption of a CEQA document cannot be issued before a project has been approved.<sup>19</sup> This is consistent with CEQA's requirement that a CEQA document consider the "whole of an action."<sup>20</sup> This includes all phases of a project that are reasonably foreseeable.<sup>21</sup> As the courts have held, "[t]he purpose of CEQA is to inform the public of plans, so that the public can help guide decision makers about environmental choices. It is not the purpose of CEQA to foment prophylactic litigation."<sup>22</sup>

The Advisory Agency was an interim decision maker for the Project with authority only to approve the VTTM. It is not the decision maker for the Project's other entitlements. Nor did the Advisory Agency consider the public comments submitted on the MND, or prepare responses to those comments, as required by CEQA. The Advisory Agency therefore lacked the capacity to adopt the MND for the Project as a whole, and the agency's findings should not have been upheld by the CPC.

In approving the VTTM and adopting the MND, the Advisory Agency also relied on a patently inadequate CEQA document which did not adequately analyze and mitigate the Project's environmental and public health impacts, and failed to require staff to prepare an EIR, as required by CEQA. These determinations were erroneously upheld by the CPC. The City Council should vacate the CPC's decision to deny CREED LA's appeal and uphold the Advisory Agency's premature and unsupported CEQA findings.

### **C. The CPC's Decision to Uphold the Advisory Agency's Subdivision Map Act Unsupported Findings Was an Abuse of Discretion**

As discussed in CREED LA's MND Comments, there is substantial evidence supporting a fair argument that the Project is likely to have, potentially significant impacts on air quality, GHG emissions, land use, noise, and hazardous materials

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<sup>19</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>20</sup> 14 CCR § 15378; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.

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

<sup>22</sup> *Endangered Habitats League, Inc. v. State Water Resources Control Bd.* (1997) 63 Cal.App.4th 227, 242

that are not fully disclosed or mitigated by the MND. An EIR is required for the Project. As a result of these unmitigated impacts, the Advisory Agency lacked substantial evidence to support the Map Act's required factual findings to approve the VTTM, which require the Advisory Agency to find that a proposed subdivision is consistent with the general plan/specific plan, and does not have any detrimental environmental or public health effects.<sup>23</sup>

The purpose of the Map Act is to regulate and control design and improvement of subdivisions with proper consideration for their relation to adjoining areas, to require subdividers to install streets and other improvements, to prevent fraud and exploitation, and to protect both the public and purchasers of subdivided lands.<sup>24</sup> Before approving a tentative map, the Map Act requires the agency's legislative body to make findings that the proposed subdivision map, together with the provisions for its design and improvement, is consistent with the general plan and any specific plan.<sup>25</sup> The Map Act also requires the agency's legislative body to deny a proposed subdivision map in any of the following circumstances:

- (a) the proposed map is ***not consistent with applicable general and specific plans*** as specified in Section 65451.
- (b) the design or improvement of the proposed subdivision is ***not consistent with applicable general and specific plans***.
- (c) the site is not physically suitable for the type of development.
- (d) the site is not physically suitable for the proposed density of development.
- (e) the ***design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat***.
- (f) the ***design of the subdivision or type of improvements is likely to cause serious public health problems***.
- (g) the ***design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision***. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This

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<sup>23</sup> Gov Code §§66473.5, 66474.

<sup>24</sup> *Pratt v. Adams* (1964) 229 Cal.App.2d 602.

<sup>25</sup> Gov Code § 66473.5.  
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subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.<sup>26</sup>

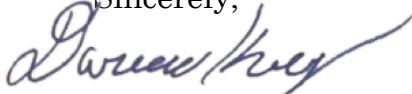
CREED LA and its experts provided substantial evidence demonstrating that the Project is likely to have significant, unmitigated impacts in several of these areas. The Advisory Agency failed to consider CREED LA's evidence before approving the VTTM, and failed to require an EIR for the Project which fully discloses and mitigates the Project's significant impacts. The Advisory Agency's findings that none of the conditions requiring denial of the VTTM under the Map Act existed were therefore not supported with substantial evidence, and should not have been upheld by the CPC.

The City Council should vacate the CPC's decision to deny CREED LA's appeal of the Advisory Agency's VTTM approval pursuant to, at a minimum, Government Code Sections 66473.5 and 66474(a), (b), and (f).

## II. CONCLUSION

CREED LA respectfully requests that the City Council set a hearing on this appeal concurrently with the City Council's hearing on the remainder of the Project's entitlements. At the hearing, CREED LA respectfully requests that the City Council vacate the CPC's denial of CREED LA's appeal of the Advisory Agency's approval of the VTTM, CEQA findings, Map Act findings, and all other actions taken by the CPC as described in the LOD. The City Council should also direct City staff to prepare an EIR for the Project.

Sincerely,



Darien K. Key

Attachment

DKK:acp

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<sup>26</sup> Gov. Code § 66474 (emphasis added).  
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# **EXHIBIT 1**

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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**VIA EMAIL ONLY**

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**Re: Comments on the 655 Mesquit Project; Case Number: ENV-2020-6829-EAF CPC-2020-6828-GPA-ZC-HD-SPR-MCUP**

Dear Ms. Escobar and Mr. Bertoni:

These comments are submitted on behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”) regarding the Mitigated Negative Declaration (“MND”) prepared by the City of Los Angeles (“City”) for the 655 Mesquit Street Project (Case No. CPC-2020-6828-GPA-ZC-HD-SPR-MCUP; Environmental Case No. ENV-2020-6829-EAF) (“Project”), proposed by 655 Mesquit, LLC (“Applicant”).

The Project proposes to redevelop a surface parking lot on the existing 640 S. Santa Fe Avenue site (“Project Site”) into a 14-story commercial building with approximately 188,954 square feet of floor area comprised of 184,629 square feet of office uses and approximately 4,325 square feet of ground floor commercial uses.<sup>1</sup>

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<sup>1</sup> City of Los Angeles Department of City Planning, Mitigated Negative Declaration: 655 Mesquit Street Project Case Number: ENV-2020-6829-EAF, CPC-2020-6828-GPA-ZC-HD-SPR-MCUP L5691-004acp

The Project Site is located on Assessor Parcel Number (APN) 5164-015-022 at 635 - 657 South Mesquit Street, 632 - 648 South Santa Fe Avenue, and 1585 East Jesse Street, Los Angeles, CA 90021. The Project would result in a total proposed floor area of 296,178 square feet for the entire Project Site, resulting in a total Floor Area Ratio (“FAR”) of 4.3:1. The Project site is located within the Central City North Community Plan Area within the City. The Project site is under the General Plan Designation Heavy Manufacturing and is zoned as M3-1-RIO within the River Implementation Overlay District (“RIO”).

We have reviewed the MND, its technical appendices, and reference documents with assistance of CREED LA’s expert consultant, whose comments and qualifications are attached. Based on our review of the MND, it is clear that the MND fails as an informational document under CEQA and lacks substantial evidence to support its conclusions that the Project’s significant impacts would be mitigated to the greatest extent feasible.

There is also substantial evidence supporting a fair argument that the Project’s potentially significant environmental impacts are far more extensive than disclosed in the MND. CREED LA and their expert consultant have identified numerous potentially significant impacts that the MND either mischaracterizes, underestimates, or fails to identify. Moreover, many of the mitigation measures described in the MND will not, in fact, mitigate impacts to the extent claimed.

We prepared these comments with the assistance of air quality and hazards expert James Clark, Ph.D. Dr. Clark’s technical comments and curriculum vitae are attached hereto as Exhibit A.<sup>2</sup> Dr. Clark concludes that the City failed to conduct adequate analysis regarding the hazards and hazardous materials on the Project site. Dr. Clark also determined that Project construction emissions will exceed applicable significance thresholds, and that Greenhouse Gas (“GHG”) emissions from Project construction and operation are underestimated. The MND fails to accurately disclose the severity of these impacts and fails to effectively mitigate them.

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(September 2021) <https://planning.lacity.org/odocument/4ff91485-df08-4bc2-8f02-87f9c4255ab1/ENV-2020-6829.pdf>.

<sup>2</sup> See **Exhibit A**, James Clark, Comments on 655 Mesquit Street Project Case Number: ENV-2020-6829-EAF CPC-2020-6828-GPA-ZC-HD-SPR-MCUP (“Clark Comments”).

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Dr. Clark's comment letter and all attachments thereto are incorporated by referenced as if fully set forth herein.<sup>3</sup> The City must address and respond to the expert comments separately.

## 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, 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 including John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias 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. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

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<sup>3</sup> CREED LA reserves the right to supplement these comments, and to file further comments at any and all future proceedings and hearings related to the Project. 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.



## I. LEGAL BACKGROUND

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.<sup>4</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>5</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>6</sup>

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.<sup>7</sup> CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the “fair argument” standard. Under that standard, a lead agency “shall” prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.<sup>8</sup>

In contrast, a mitigated negative declaration may be prepared only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

- (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur*, and
- (2) there is *no substantial evidence* in light of the whole

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<sup>4</sup> See Pub. Resources Code § 21000; CEQA Guidelines § 15002.

<sup>5</sup> *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).

<sup>6</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>7</sup> See Pub. Resources Code § 21100.

<sup>8</sup> Pub. Resources Code §§ 21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

record before the public agency that the project, as revised, *may* have a significant effect on the environment.<sup>9</sup>

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”<sup>10</sup> The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.<sup>11</sup> An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.<sup>12</sup>

“Substantial evidence” required to support a fair argument is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”<sup>13</sup> According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064, subdivision (f):

[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.”<sup>14</sup> Deferring

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<sup>9</sup> Pub. Resources Code § 21064.5 (emphasis added).

<sup>10</sup> See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

<sup>11</sup> *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

<sup>12</sup> *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

<sup>13</sup> CEQA Guidelines § 15384(a).

<sup>14</sup> CEQA Guidelines § 15126.4(a)(2).

formulation of mitigation measures to post-approval studies is generally impermissible.<sup>15</sup> Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.<sup>16</sup> If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.<sup>17</sup> Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report's recommendations is insufficient to meet the standard for properly deferred mitigation.<sup>18</sup>

With respect to this Project, the MND fails to satisfy the basic purposes of CEQA. The MND fails to adequately disclose, investigate, and analyze the Project's potentially significant impacts, and fails to provide substantial evidence to conclude that impacts will be mitigated to a less than significant level. Because the MND lacks basic information regarding the Project's potentially significant impacts, the MND's conclusion that the Project will have a less than significant impact on the environment is unsupported.<sup>19</sup> The City failed to gather the relevant data to support its finding of no significant impacts. Moreover, substantial evidence shows that the Project may result in potentially significant impacts. Therefore, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

## II. THE MND FAILS TO PROVIDE A COMPLETE AND ACCURATE PROJECT DESCRIPTION

CEQA requires that an EIR "set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact."<sup>20</sup> Similarly, an MND must present a complete and accurate description of the project

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<sup>15</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code § 21061.

<sup>16</sup> *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical*, *supra*, 29 Cal.App.4th at p. 1604, fn. 5.

<sup>17</sup> *Gentry*, 36 Cal.App.4th at 1393.

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

<sup>19</sup> PRC § 21064.5.

<sup>20</sup> *San Joaquin Raptor Rescue Center v. County of Merced* 149 Cal.App.4th 645, 654 (citing 14 C.C.R. § 15124).

under consideration.<sup>21</sup> “The scope of the environmental review conducted for the initial study must include the entire project ... [A] correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA.”<sup>22</sup> A negative declaration is “inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis. An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency’s action. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance.”<sup>23</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>24</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 does not mean each separate governmental approval.<sup>25</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>26</sup> As explained below, the Clark Comments highlight numerous deficiencies in the MND’s Project description.

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

The MND states that the Project will allow “the sale of full line alcoholic beverages within four restaurants and bars” on the Project site.<sup>27</sup> However, the

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<sup>21</sup> 14 C.C.R. § 15063(d)(1) (requiring an initial study to include a description of the project).

<sup>22</sup> *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267 (internal quotations and citations omitted).

<sup>23</sup> *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406 (internal quotations and citations omitted).

<sup>24</sup> 14 C.C.R. 15378(a).

<sup>25</sup> CEQA Guidelines § 15378.

<sup>26</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>27</sup> MND, p. 50.

Project description fails to identify the accompanying activities that would result in noise impacts, such as live or recorded music, or boisterous patrons that may impact sensitive receptors at the AMP Loft property.

The AMP Lofts is a multi-family residential property located 260 feet southwest of the Project site.<sup>28</sup> The resulting noise from Project operation may require mitigation to reduce adverse impacts to neighboring residents, specifically the AMP Lofts residents. The MND fails to disclose whether the Project anticipates the use of sound systems, alcohol on balconies on the upper floors and in the paseo courtyard, and other sources of significant noise impacts, thus failing to disclose a potentially significant operational noise impact.

The MND'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 and erecting sound barriers, may be necessary to reduce these impacts, but are absent from the MND. The MND's conclusion that the Project will result in less than significant operational noise impacts, with no mitigation required, is not supported by substantial evidence.

### **III. AN EIR IS REQUIRED FOR THE PROJECT BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT WILL HAVE SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS**

A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.<sup>29</sup> “[S]ignificant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.”<sup>30</sup> An effect on the environment need not be “momentous” to meet the

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<sup>28</sup> *Id.* at 81; 82.

<sup>29</sup> PRC § 21151; 14 CCR § 15064(f); *Citizens for Responsible Equitable Env'tl Dev. v. City of Chula Vista* (“*CREED*”) (2011) 197 Cal.App.4th 327, 330-31; *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319 (“*CBE v. SCAQMD*”).

<sup>30</sup> PRC § 21068; 14 CCR § 15382; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1581.

CEQA test for significance; it is enough that the impacts are “not trivial.”<sup>31</sup> Substantial evidence, for purposes of the fair argument standard, includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”<sup>32</sup>

CREED LA’s experts have presented direct and substantial evidence raising a fair argument that the Project will have significant impacts on air quality, GHG emissions, noise, and hazardous materials. An EIR must be prepared to further evaluate and mitigate the significant impacts to less than significant levels.

#### **A. The City Lacks Substantial Evidence to Support the MND’s Conclusion that the Project Would Result in Less Than Significant Health Risk Impacts**

CEQA requires a detailed analysis of the public health impacts from air pollutants that would be generated by a development project.<sup>33</sup> The City’s analysis of the Project’s health risk from construction emissions is inadequate. The MND concludes, absent substantial evidence, that the Project’s construction air quality emission impacts would be less than significant.<sup>34</sup> The City did not, however, conduct a health risk analysis (“HRA”) for the Project. Instead, the City concludes, absent substantial evidence, that “health risks associated with DPM emissions during construction would be less than significant” due to the short-term exposure of sensitive receptors.<sup>35</sup> Dr. Clark concluded that the City’s assertion that the 24-month exposure is not significant, is not supported by substantial evidence. Dr. Clark emphasized that “[e]ven brief exposures to the [toxic air contaminants] could lead to the development of adverse health impacts over the life of an individual.”<sup>36</sup>

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<sup>31</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.

<sup>32</sup> PRC § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.

<sup>33</sup> *Sierra Club*, 6 Cal.5th at 518–522; 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>34</sup> MND, p. 77.

<sup>35</sup> *Id.* at 84.

<sup>36</sup> Clark Comments, p. 11.

Toxic air contaminants (“TACs”) from Project construction may impact sensitive receptors in the vicinity of the Project site including:

- 1) AMP Lofts, 695 S. Santa Fe Avenue (multi-family residential)
- 2) Artists’ Lofts, 2101 7th Street (multi-family residential)
- 3) Brick Lofts, 652 Mateo Street (multi-family residential)”<sup>37</sup>

Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. TACs are airborne substances that are capable of causing short-term (acute) and/or long-term (chronic or carcinogenic, i.e., cancer causing) adverse human health effects (i.e., injury or illness). TACs include both organic and inorganic chemical substances. The current California list of TACs includes approximately 200 compounds, including particulate emissions from diesel-fueled engines.

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.<sup>38,39,40</sup> Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.<sup>41</sup> Exposure to DPM increases the risk of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls,

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<sup>37</sup> City of Los Angeles. 2021. Initial Study/Mitigated Negative Declaration For 655 Mesquit Street Project. Case Number ENV-2020-6829-EAF, CPC-2020-6828-GPA-ZC-HD-SPR-MCUP. Pg 81.

<sup>38</sup> Clark Comments, p. 11; California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB%20identified%20DPM,and%20other%20adverse%20health%20effects.>

<sup>39</sup> Clark Comments, p. 11; U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

<sup>40</sup> Clark Comments, p. 11; Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; [http://www.edf.org/documents/4941\\_cleanerdieselhandbook.pdf](http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf), accessed July 5, 2020.

<sup>41</sup> Clark Comments, p. 11; California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

immunological allergic reactions, and airway constriction.<sup>42</sup> DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM<sub>2.5</sub> and PM<sub>10</sub>.<sup>43</sup>

While the potential exposure period for the closest sensitive receptor may be only 24 months, the inherent toxicity of the TACs requires the City to first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern.<sup>44</sup> Following that analysis, then the City can make a determination of the relative significance of the emissions. The City's failure to perform such an analysis is clearly a major flaw in there MND and may be placing the residents of the adjacent structures at risk from the construction and operational phases of the Project.<sup>45</sup>

The MND lacks substantial evidence to support its conclusion that the Project would result in less than significant health risks from Project construction and operational TACs. The City must prepare an HRA in an EIR for the Project to quantify the Project's health risk impacts and mitigate any significant impacts to the greatest extent feasible.

### **B. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Health Risk from Operational Emissions**

The City's analysis of the Project's operational TAC emissions is flawed.<sup>46</sup> The MND states that the only potential source of toxic air contaminants generated by the Project would be diesel particulate matter ("DPM"), which would be generated by motor vehicles traveling to and from the Project Site. Dr. Clark

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<sup>42</sup> Clark Comments, p. 11; Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.

<sup>43</sup> Clark Comments, p. 11; Health & Safety Code § 39655(a) (defining "toxic air contaminant" as air pollutants "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. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant.")

<sup>44</sup> Clark Comments, p. 13.

<sup>45</sup> Clark Comments, p. 13.

<sup>46</sup> Clark Comments, p. 6.



explains that operation of the Project would generate a relatively small amount of ongoing operational DPM emissions from a minimal number of diesel-fueled vehicles (e.g., delivery trucks), as compared to an industrial oil refinery facility that has numerous heavy-duty industrial-sized equipment and industrial processes.” These statements are not supported by substantial evidence. In reviewing the CalEEMod analysis of the Project, Dr. Clark found that the emergency backup generator is “the most significant source of diesel emissions from the Project site.”<sup>47</sup> The MND fails to adequately analyze and mitigate impacts associated with the emergency backup generator.

Dr. Clark concluded that the diesel backup generator may be permitted to operate up to 200 hours per year, thus the City’s assertion that the backup generator would not exceed 12 hours per year is not supported by substantial evidence.<sup>48</sup> Dr. Clark further determined that the usage of the backup generator may even exceed 200 hours per year, if an extreme heat event occurs. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury.<sup>49</sup>

With the increased instances of extreme heat events, Dr. Clark concludes that the use of the backup generator would result in potentially significant DPM emissions which exceed thresholds. The City must prepare an EIR to analyze the additional operational impacts associated with the emergency backup generator that were not accounted for in the air quality analysis in the MND, and to mitigate any potentially significant health risks to less than significant levels.

### **C. The MND Lacks Substantial Evidence to Support the MND’s Conclusion that the Project Would Result in Less Than Significant Cumulative Air Quality Impacts**

The MND fails to adequately analyze the cumulative impacts associated with Project construction, and the cursory analysis which the MND purports to rely on is unsupported by substantial evidence.

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<sup>47</sup> Clark Comments, p. 7.

<sup>48</sup> *Id.*

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

The MND recognizes that “[a] significant impact may occur if a project adds a considerable cumulative contribution to federal or State non-attainment pollutants.”<sup>50</sup> The California Air Resources Board determined the South Coast Air Basin, the air basin encompassing the Project, is in Non-Attainment for ozone (O<sub>3</sub>), and particulate matter (“PM”) PM<sub>10</sub>, and PM<sub>2.5</sub>.<sup>51</sup> Thus, a cumulative incremental increase in any of these pollutants may result in significant cumulative air quality impacts.

The MND states that the Project would not exceed the daily air quality emission thresholds during the construction or operational phases of the Project. The MND relies on “the approval of the requested discretionary General Plan Amendment and Height District change, [such that] the Project would continue to conform to the zoning and land use designations for the Project site as identified in the General Plan, and as such, would not add emission to the Basin that were not already accounted for in the approved AQMP.”<sup>52</sup> However, this assertion is not supported by a quantitative analysis. The resultant analysis regarding cumulative impacts is therefore not based on substantial evidence.

The MND also fails to analyze the cumulative impacts associated with the General Plan Amendment which will increase density in the Planning Area which will, in turn, result in increased air quality impacts. In particular, the MND fails to quantify the reasonably foreseeable emissions increases, noise, and transportation impacts that may result from the increased density resultant from increasing the FAR from 3:1 to 4.5:1.

Further, the MND describes the Project’s construction impacts as temporary, occurring over a 24-month period, with final buildout occurring in 2025.<sup>53</sup> Dr. Clark determines that two years’ worth of construction emissions is likely to have significant cumulative impacts, and that the MND fails to provide substantial evidence that the Project construction impacts are temporary and less than significant.<sup>54</sup>

This omission in the MND’s analysis is further demonstrated by the MND’s failure to meaningfully analyze identified cumulative construction projects. The

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<sup>50</sup> MND, p. 80.

<sup>51</sup> MND, p. 68 - 69.

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<sup>53</sup> MND, p. 76.

<sup>54</sup> Clark Comments, p. 11.

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Project is being developed “in conjunction with 26 related projects,” three of which would have concurrent construction with the Project.<sup>55</sup> The MND fails to list numerous other nearby projects, which constitutes more than 500,000 square feet of construction overlapping in time.<sup>56</sup> The MND recognizes that “Development of the Project in conjunction with related projects in the Project Site vicinity would result in an increase in construction and operational emissions in an already urbanized area of the City of Los Angeles.”<sup>57</sup> But the MND later concludes, without substantial evidence, that “cumulative air quality impacts would be less than significant.”<sup>58</sup>

The MND’s failure to account for all of the proposed and active construction projects results is both a flawed baseline analysis and a failure to analyze the Project’s cumulative air quality impacts. The MND concludes that the cumulative impacts with regard to air quality would be less than significant, therefore no mitigation measures are required.<sup>59</sup> This assertion is not based on substantial evidence in the record, in violation of CEQA. The City must draft an EIR which provides a legally adequate cumulative impact analysis for the Project.

#### **D. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts From Hazards on the Project Site**

The City’s analysis of the Project impacts from hazards and hazardous material is inadequate and unsupported. The MND relies on the Phase I and Phase II Environmental Site Assessment (“ESA”) reports, which in turn rely on outdated and faulty analysis.<sup>60</sup> Dr. Clark found that the City’s reliance on a Draft Phase I Environmental Site Assessment is misplaced. The site may have significant contamination from its previous use as a “machine and metal stamping shop with paint booths and the railroad line.”<sup>61</sup> Project construction will require extensive earthmoving activities to excavate 2 levels of underground parking. Until the contamination onsite is further investigated, the City cannot conclude that the

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<sup>55</sup> MND, p. 189.

<sup>56</sup> Under Construction – An Ever-Changing Skyline (accessed Oct. 13, 2021) <https://downtownla.com/maps/development/under-construction>.

<sup>57</sup> *Id.* at 86.

<sup>58</sup> *Id.* at 87.

<sup>59</sup> MND p. 87.

<sup>60</sup> Clark Comments, p. 3.

<sup>61</sup> MND, p. 143.

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Project's impacts from hazards on the Project site are less than significant. The City's assertion that Hazards impacts are less than significant is therefore not supported by substantial evidence.

Dr. Clark found that impacts from vapor intrusion may be significant and unmitigated.<sup>62</sup> The Applicant consulted EFI Global to conduct a Phase II subsurface investigation. EFI then utilized the Johnson-Ettinger ("J/E") Vapor Intrusion Model to quantify potential vapor intrusion on the Project site. Based on the J/E Vapor Intrusion Model, EFI concluded that the detected soil vapor levels did not represent an unacceptable risk to human health. As Dr. Clark explains, the California Department of Toxic Substances Control has since recommended that "Site-specific attenuation factors derived from mathematical models, such as the Johnson and Ettinger model, are not recommended for the initial screening of occupied buildings."<sup>63</sup> The Applicant's reliance on this analysis, and the City's conclusion that the hazard impacts are less than significant is not based on substantial evidence.

Dr. Clark conducted accurate modeling for the Project's soil vapor inhalation risk. Dr. Clark concluded that, for chemicals of concern on the Project site, the maximum risk of soil vapor intrusion exceeds the significance threshold for carcinogenic chemicals of 10 in 1,000,000 for commercial workers onsite. Dr. Clark further concluded that the maximum hazard index from soil vapor intrusion exceeds the significance threshold of 1 for commercial workers onsite.<sup>64</sup> These are significant impacts which the MND fails to disclose. Dr. Clark concludes that the City must correct these errors and address these significant hazardous waste issues on site by implementing a remedial strategy to remove the residual soil vapor, mitigating the risk by requiring the installation of vapor barriers and/or vapor remedial systems onsite in an EIR.<sup>65</sup>

### **1. The MND Fails to Mitigate Hazardous Materials Risks to Less than Significant Levels.**

The MND contains no mitigation measures that address the potential presence of hazardous materials on the Project site which may expose construction

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<sup>62</sup> Clark Comments, p. 4.

<sup>63</sup> *Id.*

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

<sup>65</sup> *Id.* at 5.

workers and the community to hazardous materials. Dr. Clark recommends the installation of vapor barriers and/or vapor remedial systems onsite. Until an adequate investigation is conducted, and any issues addressed and mitigated, the City cannot conclude that the Project would have a less than significant impact from hazards on the Project site.

Further, Dr. Clark explains that the recommendations provided in the Geotechnical Report are not sufficient to reduce the impact of soil erosion and loss of topsoil to less than significant levels.<sup>66</sup> The Geotechnical Report's recommendations are not binding mitigation under CEQA. CEQA requires mitigation measures "must be fully enforceable through permit conditions, agreements, or other legally binding instruments."<sup>67</sup> An EIR must be prepared that provides enforceable mitigation to address potentially significant impacts from hazards.

#### **E. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Greenhouse Gas Impacts**

The City's analysis of the Project's GHG emissions is inadequate. The MND concludes, contrary to substantial evidence, that the Project would have a less than significant impact related to "[g]enerat[ing] greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment" and "[c]onflict[ing] with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases."<sup>68</sup>

Substantial evidence supports a fair argument that the Project may result in generating GHG emissions in exceedance of allowable thresholds, and that the Project contravenes applicable policies and plans aimed at reducing GHGs emissions. "L.A.'s Green New Deal Pathway calls for the steepest near-term reductions in GHG emissions from building energy use than any other sector and cuts 50% of emissions by 2025 and 100% by 2050."<sup>69</sup> L.A.'s Green New Deal provides for the reduction of municipal GHG emissions 55% by 2025 and 65% by 2035 from 2008 baseline levels, allowing the City to reach carbon neutrality by 2045.<sup>70</sup> The

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<sup>66</sup> MND, p. 118.

<sup>67</sup> 14 C.C.R § 15126.4.

<sup>68</sup> MND, p. 121.

<sup>69</sup> L.A.'s Green New Deal, Sustainable City pLAn (2019)

[https://plan.lamayor.org/sites/default/files/pLAn\\_2019\\_final.pdf](https://plan.lamayor.org/sites/default/files/pLAn_2019_final.pdf)

<sup>70</sup> *Id.* at p. 11.

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Project does not comport with this trajectory, in fact, the Project directly contravenes this goal, resulting in potentially significant, unmitigated GHG impacts.

The City must prepare an EIR to adequately analyze and mitigate potentially significant GHG impacts. The EIR should include mitigation measures to reduce the Project's GHG and air quality impacts to a less than significant level. CREED's experts recommend numerous measures, including:

- Require implementation of Tier 4 diesel control measures for off-road construction equipment and generators powered by diesel engines;
- Repower or replace older construction equipment engines;
- Install retrofit devices on existing construction equipment;
- Use electric and hybrid construction equipment;
- Institute a heavy-duty off-road vehicle plan;
- Reduce vehicle miles traveled by increasing transit accessibility;
- Provide electric vehicle charging stations/parking;
- Implement an employee parking "cash-out" program;
- Implement transit access improvements; and
- Expand the transit network.

The City should implement these mitigation measures in an EIR to adequately mitigate all potentially significant GHG and air quality impacts from Project construction and operation.

#### **F. The MND Lacks Substantial Evidence to Support Its Conclusion that the Project Would Result in Less Than Significant Transportation Impacts**

The City concludes that the MND need not analyze the potentially significant impact from traffic because the VMT Calculator Tool found an initially significant

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VMT per employee, but with mitigation consisting of charging for parking, providing bike parking, and including ride-share matching and other transportation demand management strategies, the VMT is brought below the significance threshold. But, “[a] Project that is below the County’s thresholds based on VMT per capita (residential projects), VMT per employee (office projects), or VMT per service population (other land uses) and does not have a VMT impact compared to baseline conditions would also not have a cumulative impact as long as it is aligned with long-term environmental goals and relevant plans.”<sup>71</sup> Here, the Project is not aligned with long-term environmental goals of the City of Los Angeles, the County of Los Angeles, or the State of California, and the Project is not aligned with all relevant plans.

For example, “L.A.’s Green New Deal pathway calls for deep reductions in GHG emissions from the transportation sector, and cuts 25% of emissions by 2025 and 100% of on-road emissions by 2050. Reductions in transportation emissions are accounted for through the electrification targets in this chapter as well as through mode shift targets in the Mobility and Public Transit chapter.” The Project’s traffic impacts contravene the goals laid out in the L.A.’s Green New Deal and therefore constitute a significant impact under CEQA.

The MND’s VMT calculations are not supported by substantial evidence. The MND relies on VMT calculations that are not fully available for public scrutiny and review. This informational deficiency disallows public scrutiny of the VMT calculation to determine the significance of traffic impacts associated with the Project. The City must draft an EIR to adequately analyze and mitigate potentially significant impacts associated with traffic.

#### **IV. THE CITY LACKS SUBSTANTIAL EVIDENCE TO APPROVE THE PROJECT’S LAND USE PERMITS**

The Project requires a number of discretionary entitlements and related approvals under local City plans and codes, including a General Plan Amendment to modify the Central City North Community Plan to include the boundaries and development standards of the Project, pursuant to the City of Los Angeles Municipal Code (“LAMC”) § 11.5.6; a Height District change from the existing Height District 1 to Height District 2, pursuant to LAMC § 12.32F; a Master

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<sup>71</sup> Los Angeles County, Los Angeles County Senate Bill (SB) 743 Implementation and CEQA Updates Report (June 2020) <https://www.ladpw.org/traffic/docs/Implementation-Report.pdf>.  
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Conditional Use Permit to permit the sale of full line alcoholic beverages within four restaurants and bars, pursuant to LAMC § 12.21 W.1; Site Plan Review for a project that results in an increase of 50,000 gross square feet or more of nonresidential uses, pursuant to LAMC § 16.05; and a Vesting Tentative Tract Map pursuant to LAMC § 17.03 and 17.15.<sup>72</sup>

Each permit requires the City to make findings regarding land use consistencies and/or environmental factors. As discussed herein, there is substantial evidence supporting a fair argument that the Project has potentially significant, unmitigated impacts on air quality, GHG, hazards, and noise, that the MND fails to accurately disclose and fails to mitigate to less than significant levels. These unmitigated impacts create inconsistencies with several of the permits required for the Project.

Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy constitutes a significant land use impact and, in itself, indicates a potentially significant impact on the environment.<sup>73</sup> Any inconsistencies between a proposed project and applicable plans must be discussed in an EIR.<sup>74</sup> A project's inconsistencies with local plans and policies also constitute significant impacts under CEQA.<sup>75</sup> The City must circulate an EIR to adequately disclose and mitigate the significant land use impacts discussed below.

### **A. General Plan Amendment and Height District Change**

The Project Applicant is seeking a General Plan Amendment to modify footnotes 1 and 6 of the Central City North Community Plan.<sup>76</sup> Footnote 1 of the Central City North Community Plan limits the Project Site to Height District No. 1. Footnote 6 states that development exceeding an FAR of 1.5:1 up to 3:1 on properties designated as Height District No.1 may be permitted through a Zone Change Height District Change procedure, including environmental clearance. The

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<sup>72</sup> MND, p. 50.

<sup>73</sup> See, *Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.

<sup>74</sup> 14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).

<sup>75</sup> *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177; see also, *County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376.

<sup>76</sup> MND, p. 30.



requested Zone Change Height District Change would modify both footnotes to include the proposed boundaries and development standards of the Project.

With approval of the Height District Change, the allowable FAR would increase from 1.5:1 to 4.5:1, resulting in a development potential of up to 310,018 square feet on the Project Site. The Project would create approximately 188,954 new square feet of developed floor area. Combined with the 107,224 square feet of existing floor area from the 640 S. Santa Fe Avenue building, the total proposed floor area across the Project Site would be 296,178 square feet, resulting in a total FAR of 4.3:1.

The General Plan Amendment would result in a permanent change that impacts the entire Community Plan Area, and is not limited to the Project site. The General Plan Amendment would result in a higher FAR allowed in the Central City North Community Plan with a Height District Change than is currently allowed under Footnotes 1 and 6. Higher floor area ratios result in denser construction. The MND lacks analysis of the impacts that the General Plan Amendment would have from increased development density and associated environmental and public health impacts that would result in the Central City North Community Plan Area from authorizing a higher FAR.

The MND also lacks substantial evidence to demonstrate that the Project satisfies the mandatory requirements for approving a General Plan Amendment. Under Section 556 of the City Charter, in order to amend the General Plan, the “City Planning Commission and the Council shall make findings showing that the action is in substantial conformance with the purposes, intent and provisions of the General Plan.”<sup>77</sup> “Once a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be ‘in harmony’ with the policies stated in the plan.”<sup>78</sup> It is the role of the City to determine the Project’s consistency with the General Plan, not to make the General Plan consistent with the Project.

Here, the proposed Project violates the existing General Plan, thus necessitating a General Plan Amendment to allow the Project to proceed. The MND lacks a detailed analysis of the impacts associated with the increased density that would be authorized by the Project’s increased FAR, and lacks an analysis of the

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<sup>77</sup> City of Los Angeles Charter § 556.

<sup>78</sup> *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 638. L5691-004acp

impacts associated with the incremental increases in density that could subsequently be authorized under subsequent Height District Changes in the Central City North Community Plan once Footnotes 1 and 6 are amended to authorize FAR of up to 4.5:1. Impacts associated with increased residential and commercial density that should have been analyzed in the Project's CEQA document include increased air quality impacts, noise, transportation impacts, and impacts on public services, to name a few. An EIR is required to analyze and mitigate the full extent of the Project's impacts from the proposed General Plan Amendment.

Finally, the MND fails to include evidence that would support the approval of a General Plan amendment pursuant to LAMC Section 11.5.6(B). Pursuant to this section, the LAMC would not restrict adoption of a General Plan Amendment which provides for an exclusively local work force at prevailing wage, and provides affordable housing.<sup>79</sup> Since the MND lacks evidence demonstrating that these factors will be met, the General Plan amendment is not clearly eligible for approval under the LAMC.

The City failed to adequately analyze and mitigate the impacts associated with nonconformance with the existing General Plan and the City failed to analyze potentially significant impacts associated with this General Plan Amendment, in violation of CEQA. The City must prepare an EIR to adequately analyze and mitigate all impacts associated with the General Plan Amendment and Height District Change.

## **B. Master Conditional Use Permit Approval for the Sale of Alcohol**

The Project must secure approval pursuant to LAMC Section 12.24-W,1 for the sale and dispensing 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.<sup>80</sup> Section 12.24-W,1, however, requires that the Zoning Administrator shall find, among other things, that that the proposed use "will not adversely affect the welfare of the pertinent community."<sup>81</sup>

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<sup>79</sup> LAMC § 11.5.6(B)(2), (3).

<sup>80</sup> MND, p. 50.

<sup>81</sup> LAMC Section 12.24.W.1(a)(1).

The potential impacts from noise on neighboring residences from establishments serving alcohol can be significant. Noise from boisterous patrons and music being played on the Project Site will likely have an impact on the residences at the AMP Lofts and other sensitive receptors, and could impact homes' interiors since windows have poor low-frequency attenuation. The resulting noise from these activities may require mitigation to reduce adverse impacts to neighboring residents.

The MND fails to disclose whether the Project anticipates the use of sound systems, alcohol on balconies on the upper floors and in the paseo courtyard, and other sources of significant noise impacts, and fails to analyze whether the establishments serving alcohol will adversely affect the welfare of the pertinent community. The MND thus does not provide the substantial evidence to support the required findings that must be made for approval of a Master Conditional Use Permit for the sale and dispensing of alcohol to be consumed at the site. The City must prepare an EIR which adequately analyzes and mitigates impacts associated with alcohol sales on the Project site.

### C. Vesting Tentative Tract Map

Pursuant to LAMC Sections 17.03 and 17.15, the City requires a Vesting Tentative Tract Map. But, neither the MND nor the appendices provide the Vesting Tentative Tract Map for public review. CEQA requires a lead agency to provide sufficient information to foster informed decision making and public participation. The court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* determined that “[t]he data in the EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project.”<sup>82</sup> Further, “information scattered here and there in EIR appendices or a report buried in an appendix, is not a substitute for a good faith reasoned analysis.”<sup>83</sup> The requirement of a detailed analysis ensures that stubborn problems or serious criticism are not “swept under the rug.”<sup>84</sup>

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<sup>82</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.

<sup>83</sup> *Id.*, quoting *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239, quoting *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 723.

<sup>84</sup> *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357.  
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A Vesting Tentative Map should have been provided for public scrutiny in this case. A Vesting Tentative Map would have elucidated the real-world impacts of the Project. Further, LAMC Section 17.15(B)(1)(a) requires that “[i]f it is known at the time of filing that an additional approval... is necessary, the application for such additional approval shall be filed prior to or simultaneously with the vesting tentative map.”<sup>85</sup> The Vesting Tentative Map was not made available for public review along with the MND. This violation of the LAMC constitutes a significant impact under CEQA, and an informational deficiency under CEQA. An EIR should be prepared to correct these deficiencies.

## V. CONCLUSION

There is substantial evidence supporting a fair argument that the Project may result in potentially significant adverse impacts that were not identified in the MND, and thus have not been adequately analyzed or mitigated. The City also lacks substantial evidence to support many of the MND’s significance conclusions, in violation of CEQA.

We urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing a legally adequate EIR to address the potentially significant impacts described in this comment letter and the attached letter from James Clark Ph.D. This is the only way the City and the public will be able to ensure that the Project’s significant environmental impacts are mitigated to less than significant levels.

Thank you for your consideration of these comments.

Sincerely,



Kelilah D. Federman

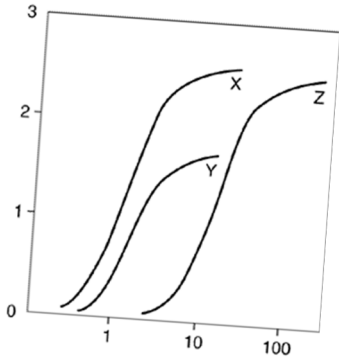
Attachment

KDF:acp

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<sup>85</sup> LAMC § 17.15(B)(1)(a).  
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# **EXHIBIT A**



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Environmental Consulting, Inc.

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October 13, 2021

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

**Attn: Ms. Kelilah D. Federman**

**Subject: DRAFT Comments On 655 Mesquit Street Project Case  
Number: ENV-2020-6829-EAF CPC-2020-6828-GPA-  
ZC-HD-SPR-MCUP**

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Dear Ms. Federman:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the 2021 City of Los Angeles Initial Study/Mitigated Negative Declaration (IS/MND) 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 involves the redevelopment of a surface parking lot on the existing 640 S. Santa Fe Avenue site (“Project Site”) into a 14-story commercial building with approximately 188,954 square feet of floor area comprised of 184,629 square feet of office uses and approximately 4,325 square feet of ground floor commercial uses (“Project”). The proposed development activities would be limited to the eastern portion of the Project Site fronting Mesquit Street (referred to as the “Development Site”). The Project Site occupies approximately 68,893 square feet of lot area (1.58 acres) after dedications and is located on the northern side of Jesse Street, between Mesquit Street and Santa Fe Avenue in the Arts District in the City

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of Los Angeles (“City”). The western half of the Project Site that fronts Santa Fe Avenue is developed with the recently constructed 640 S. Santa Fe Avenue building, which is a four-story, 107,224 square-foot office and ground floor commercial building with two levels of subterranean parking. The Development Site is currently developed as a surface parking lot to serve the 640 S. Santa Fe Avenue building.

The Project would include two levels of subterranean parking and five levels of above grade parking on a portion of the Project Site that is currently improved with a surface parking lot. The height of the new structure would be 195 feet above grade. Vehicular access to the parking would be provided by a two-way driveway shared with the 640 S. Santa Fe Avenue building, running along the northern property line from Santa Fe Avenue through to Mesquit Street. From the driveway, on the interior of the Project Site, access to the two subterranean parking levels would be provided by a ramp shared with the 640 S. Santa Fe Avenue building, and access to the five levels of above grade parking would be provided via an interior ramp within the Project building footprint. The top level of the above-grade parking level is proposed to function as a flexible community space when not in use for parking. In total, the Project would provide 397 vehicle parking spaces, 343 of which satisfy code required parking for the Project and 54 of which would serve the 640 S. Santa Fe Avenue Project as replacements for the parking displaced from the existing surface parking lot. Loading space and some handicap accessible parking spaces would be provided at grade. The Project’s proposed floor area of 188,954 square feet combined with the 107,224 square feet of floor area from the 640 S. Santa Fe Avenue building would create a total proposed floor area of 296,178 square feet for the entire Project Site, resulting in a Floor Area Ratio of 4.3:1.

The Project Site is identified as Assessor Parcel Number (APN No. 5164-015-022) and encompasses 68,893 square feet of lot area (1.58 acres) after right-of-way dedications. The Project Site is generally bounded by the Los Angeles Department of Water and Power (LADWP) River Switching Station to the north (“LADWP substation”), Mesquit Street to the east, Jesse Street to the south, and Santa Fe Avenue to the west. The western half of the Project Site is occupied by the 640 S. Santa Fe Avenue building, a four-story office and ground floor commercial building with two levels of subterranean parking that fronts Santa Fe Avenue. The proposed Development Site, which is located on the eastern portion of the Project Site fronting Mesquit Street, is currently developed as a surface parking lot to serve the 640 S. Santa Fe Avenue building. The properties surrounding the Project Site

are developed with offices, industrial uses, warehousing and storage, and to the east are the Burlington Northern Santa Fe Railway trackage, and the Los Angeles River.

Existing Conditions - The western half of the Project Site is improved with the 640 S. Santa Fe Avenue building, a four-story, 107,224 square foot, office with ground floor commercial uses with two levels of subterranean parking. The proposed Development Site, which occupies the eastern half of the Project Site, is currently a surface parking lot for the 640 S. Santa Fe Avenue building. The 640 S. Santa Fe Avenue Project, in accordance with the approved landscape palate for DIR-2016-3858-SPR, includes approximately 20 trees within the planters in the surface parking lot on the Development Site.

According to the City's IS/MND, the Project would result in significant and unavoidable impacts related to on transportation and tribal resources. All other impacts were determined to be less than significant with mitigation. The assessment the City provided in the IS/MND misses the significant impacts associated with air quality that have been ignored by the City. The conclusion from the City that all other potential impacts would be less than significant is, in fact, without merit. There are substantial impacts that are not addressed in the City's analysis that must be addressed in an environmental impact report (EIR).

### **Specific Comments:**

#### **1. The City Relies On A Phase I Environmental Site Assessment (ESA) That Is Out Of Date, Unsigned And A Draft Report.**

In Section IX of the IS/MND, the City determined that the Project would not create a significant hazard to the public or the environment. Part of the basis of the determination is the Phase I Environmental Site Assessment report prepared by Ninyo and Moore. A review of the report in Appendix E of the IS/MND reveals that the report is stamped DRAFT on every page, is unsigned by the professional who prepared the report, and is more than 5 years old (dated March 18, 2016). Submittal of a draft report without signatures clearly does not comport with the guidance from ASTM or the State of California regarding environmental site assessments, and ASTM standards state that Phase I Environmental Site Assessments are presumed to be valid for just 180 days. The conclusions of the report would not be supportable in any manner given these conditions. The City must correct



this error by preparing and circulating a new Environmental Site Assessment in an environmental impact report for the Project.

**2. The City’s Determination That There Is Not A Hazard On Site Is Not Supported By The Existing Data And It Is Clear That There Is A Potential Health Risk From Vapor Intrusion That Exceeds The Significance Thresholds Of 10 In One Million Or A Hazard Index In Excess Of 1.**

In Appendix E to City’s IS/MND is included a Phase II subsurface investigation by EFI Global. The purpose of the Phase II was to whether the former on-site operations and features had significantly impacted the subsurface of the Site. Seventeen borings were advanced to a maximum depth of 15 ft below ground surface. Soil vapor probes were only sampled at depths of 5 ft bgs. EFI found that tetrachloroethylene (PCE), trichloroethylene (TCE), 1,1,1-trichloroethane (1,1,1-TCA), and trichlorotrifluormethane (FC-11) were detected across the site. EFI compared the sampling results to the California Human Health Screening Levels (CHHSLs) and used the Johnson-Ettinger (J/E) Vapor Intrusion Model to quantify the potential vapor intrusion risk at the Site. Based on the J/E Vapor Intrusion Model, EFI Global opined that the detected soil vapor levels did not represent an unacceptable risk to human health to the existing structure or future Site structures assuming continued commercial use of the Site.<sup>1</sup>

Since the preparation of the Phase II report, the State of California’s Department of Toxic Substances Control (DTSC) has abandoned the use of the J/E Vapor Intrusion Model in favor of an attenuation factor model. According to the DTSC<sup>2</sup>, the “Supplemental Guidance recommends the use of USEPA empirically-derived attenuation factors (AFs) (USEPA, 2015a) for the screening of sites in California. These AFs are protective of public health under most building occupancy scenarios and should be used for the initial screening of sites. Site-specific AFs derived from mathematical models, such as the Johnson and Ettinger model, are not recommended for the initial screening of occupied

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<sup>1</sup> EFI Global. 2016. Phase II Environmental Site Assessment Report Performed at 640 South Santa Fe Avenue, Los Angeles, CA. Pg 10 of 14.

<sup>2</sup> DTSC. 2020. Supplemental Guidance: Screening and Evaluating Vapor Intrusion. [https://dtsc.ca.gov/wp-content/uploads/sites/31/2020/02/Public-Draft-Supplemental-VI-Guidance\\_2020-02-14.pdf](https://dtsc.ca.gov/wp-content/uploads/sites/31/2020/02/Public-Draft-Supplemental-VI-Guidance_2020-02-14.pdf)

buildings.” The recommended attenuation factor for subslab soil gas and soil gas was calculated to be 0.03.

Using the AF of 0.03 and the soil vapor results measured on site during the 2016 Phase II Investigation, it is possible to calculate the indoor air concentrations of vapors migrating into buildings on the Project site. For the chemicals of concern (COCs) measured onsite, the maximum risk from soil vapor intrusion exceeds the significance threshold for carcinogenic chemicals of 10 in 1,000,000 for commercial workers on site.

**Estimated Potential Cancer Risk for Inhalation of VOCs In Indoor Air  
Commerical Worker Inhalation Risk - 5 Ft Using 0.03 AF  
640 South Santa Fe Avenue  
Los Angeles, CA**

CHEMICAL	Soil Gas Concentration (µg/m <sup>3</sup> )	Indoor Air VOC Concentration (µg/m <sup>3</sup> )	IUR (ug/m3)-1	Estimated Potential Cancer Risk
Chlorinated VOC COPCs				
1,1,1-Trichloroethane	4.95E+01	1.485	N/A	0.0E+00
PCE	1.23E+03	36.9	2.60E-07	1.4E-06
TCE	5.76E+02	17.28	4.10E-06	1.20E-05
Halogenated Refrigerant COPCs				
Trichlorofluoromethane	2.87E+01	0.861	N/A	0.0E+00
Vapor Inhalation Risk				1.3E-05

For the COCs measured onsite, the maximum hazard index from soil vapor intrusion exceeds the significance threshold of 1 for commercial workers on site.

**Estimated Potential Noncancer Hazard Index for Inhalation of VOCs in Soil Gas  
Commerical Worker Exposure Scenario Hazard Index - 5 Ft Using 0.03 AF  
640 South Santa Fe Avenue  
Los Angeles, CA**

CHEMICAL	Soil Gas VOC Concentration (µg/m <sup>3</sup> )	Indoor Air VOC Concentration (µg/m <sup>3</sup> )	Inhalation RfC (mg/m <sup>3</sup> )	Estimated Potential Hazard Quotient
Chlorinated VOC COPCs				
1,1,1-Trichloroethane	4.95E+01	1.485	5.00E+00	6.8E-05

PCE	1.23E+03	36.9	4.00E-02	2.1E-01
TCE	5.76E+02	17.28	2.00E-03	2.0E+00
Halogenated Refrigerant COPCs				
Trichlorofluoromethane	2.87E+01	0.861	N/A	
Vapor Inhalation HI				2.2E+00

The City must correct these errors and address these significant hazardous waste issues on site by implementing a remedial strategy to remove the residual soil vapor, mitigating the risk by requiring the installation of vapor barriers and/or vapor remedial systems onsite in an EIR.

**3. The City’s Air Quality Analysis Regarding Toxic Air Contaminant (TAC) Emissions From The Operational Phase Of The Project Is Seriously Flawed.**

The City’s air quality analysis of TACs emissions is seriously flawed and ignores known source(s) on site. According to the IS/MND, “the only potential source of toxic air contaminants generated by the Project would be diesel particulate matter (DPM), which would be generated by motor vehicles traveling to and from the Project Site. Operation of the Project would generate a relatively small amount of ongoing operational DPM emissions from a minimal number of diesel-fueled vehicles (e.g., delivery trucks), as compared to an industrial oil refinery facility that has numerous heavy-duty industrial-sized equipment and industrial processes.” The City’s comparison of the impacts of the diesel-fueled vehicles and industrial oil refinery facility is non-sensical and immaterial to whether the Project is a source of TACs and whether the emissions from the Project would have an impact on the community or the environment. The City must remove this ill-conceived comparison from its analysis.

A closer look at the CalEEMOD analysis of the Project shows that the City was aware that another source, the emergency backup generator for the Project was also included in the model. The analysis performed by the City assumes that the 1000 horse power back-up generator (BUG) would only be operated 12 hours a year for testing.

## 10.0 Stationary Equipment

### Fire Pumps and Emergency Generators

Equipment Type	Number	Hours/Day	Hours/Year	Horse Power	Load Factor	Fuel Type
Emergency Generator	1	0.5	12	1000	0.73	Diesel

### 10.1 Stationary Sources

#### Unmitigated/Mitigated

	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
Equipment Type	lb/day										lb/day					
Emergency Generator - Diesel (750 - 9999 HP)	0.8204	3.6694	2.0922	3.9400e-003		0.1207	0.1207		0.1207	0.1207		419.7571	419.7571	0.0589		421.2283
<b>Total</b>	<b>0.8204</b>	<b>3.6694</b>	<b>2.0922</b>	<b>3.9400e-003</b>		<b>0.1207</b>	<b>0.1207</b>		<b>0.1207</b>	<b>0.1207</b>		<b>419.7571</b>	<b>419.7571</b>	<b>0.0589</b>		<b>421.2283</b>

It is clear from the City's analysis that the BUG is the most significant source of diesel emissions from the project site.

## 2.2 Overall Operational

### Mitigated Operational

	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					
Area	4.2950	5.4000e-004	0.0598	0.0000		2.1000e-004	2.1000e-004		2.1000e-004	2.1000e-004		0.1285	0.1285	3.3000e-004		0.1368
Energy	0.0821	0.7460	0.6267	4.4800e-003		0.0567	0.0567		0.0567	0.0567		895.2503	895.2503	0.0172	0.0164	900.5703
<b>Mobile</b>	<b>2.7298</b>	<b>12.3966</b>	<b>32.7872</b>	<b>0.1357</b>	<b>12.0099</b>	<b>0.0943</b>	<b>12.1042</b>	<b>3.2128</b>	<b>0.0876</b>	<b>3.3003</b>		<b>13,853.3191</b>	<b>13,853.3191</b>	<b>0.5940</b>		<b>13,868.1680</b>
<b>Stationary</b>	<b>0.8204</b>	<b>3.6694</b>	<b>2.0922</b>	<b>3.9400e-003</b>		<b>0.1207</b>	<b>0.1207</b>		<b>0.1207</b>	<b>0.1207</b>		<b>419.7571</b>	<b>419.7571</b>	<b>0.0589</b>		<b>421.2283</b>
<b>Total</b>	<b>7.9273</b>	<b>16.8126</b>	<b>35.5658</b>	<b>0.1441</b>	<b>12.0099</b>	<b>0.2719</b>	<b>12.2818</b>	<b>3.2128</b>	<b>0.2682</b>	<b>3.4779</b>		<b>15,168.4548</b>	<b>15,168.4548</b>	<b>0.6703</b>	<b>0.0164</b>	<b>15,190.1034</b>

The City must address this significant source of diesel emissions on site and assess what the impacts will be on the community in an EIR.

#### **4. The City's CalEEMOD Analysis Of Emissions From The Back Up Generator (BUG) On-Site Must Include The Testing And Non-Testing (Operational) Impacts Of The BUG**

According to SCAQMD Rules 1110.2, 1470, back-up generators (BUGs) are allowed to operate for up to 200 hours per year and maintenance cannot exceed more than 50 hours per year. The assumption by the City that maintenance and testing of the BUG would not exceed 12 hours per year is unsupported. The City must revise its air quality analysis to include the use of BUGs onsite in an EIR.

In addition to the testing emissions the air quality analysis must include the substantial increase in operational emissions from BUGs in the Air Basin due to unscheduled events, including but not limited to Public Safety Power Shutoff (PSPS) events and extreme heat events. Extreme heat events are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.<sup>3</sup> From January, 2019 through December, 2019, Southern California Edison reported 158 of their circuits underwent a PSP event<sup>4</sup>. In Los Angeles County two circuits had 4 PSPS events during that period lasting an average of 35 to 38 hours. The total duration of the PSPS events lasted between 141 hours to 154 hours in 2019. In 2021, the Governor Of California declared that during extreme heat events the use of stationary generators shall be deemed an emergency use under California Code of Regulations (CCR), title 17, section 93115.4 sub. (a) (30) (A)(2). The number of Extreme Heat Events is likely to increase in California with the continuing change in climate the State is currently undergoing.

Power produced during PSPS or extreme heat events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts).<sup>5</sup> Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon

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<sup>3</sup> Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021.

<sup>4</sup> SCAQMD. 2020. Proposed Amendment To Rules (PARS) 1110.2, 1470, and 1472. Dated December 10, 2020. [http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2\\_1470\\_1472/par1110-2\\_1470\\_wgm\\_121020.pdf?sfvrsn=6](http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2_1470_1472/par1110-2_1470_wgm_121020.pdf?sfvrsn=6).

<sup>5</sup> CARB. 2019. Use of Back-up Engines For Electricity Generation During Public Safety Power Shutoff Events. October 25, 2019.

particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury.

According to the California Public Utilities Commission (CPUC) de-energization report<sup>6</sup> in October 2019, there were almost **806 PSPS events** (emphasis added) that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers, and the rest were commercial/industrial/medical baseline/other customers. CARB's data also indicated that on average each of these customers had about 43 hours of power outage in October 2019.<sup>7</sup> Using the actual emission factors for each diesel BUG engines in the air district's stationary BUGs database, CARB staff calculated that the 1,810 additional stationary generators (like those proposed for the Project) running during a PSPS in October 2019 generated 126 tons of NOx, 8.3 tons of particulate matter, and 8.3 tons of DPM.

For every PSPS or Extreme Heat Event (EHE) triggered during the operational phase of the project, significant concentrations of DPM will be released that are not accounted for in the City's analysis. In 2021, two EHEs have been declared so far. For the June 17, 2021 Extreme Heat Event, the period for which stationary generator owners were allowed to use their BUGs lasted 48 hours. For the July 9, 2021 EHE, the period for which stationary generator owners were allowed to use their BUGs lasted 72 hours. These two events would have tripled the calculated DPM emissions from the Project if only the 50 hours of testing that is allowed were quantified for the Project's operational emissions. An EIR must be written for the Project that includes an analysis of the additional operation of the BUG that will occur at the project site that is not accounted for in the current air quality analysis.

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<sup>6</sup> <https://www.cpuc.ca.gov/deenergization/> as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage..

<sup>7</sup> CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage..

## 5. The City’s Air Quality Analysis Fails To Include A Quantitative Health Risk Analysis Of The Impacts Of Toxic Air Contaminants From The Construction Phase And The Operational Phase Of The Project For The Nearest Sensitive Receptor(s)

The City failed to conduct a numerical health risk analysis (HRA) for Project. According to the IS/MND a “significant impact may occur if a project were to generate pollutant concentrations to a degree that would significantly affect sensitive receptors.... Air quality-sensitive land uses that are located at greater distances from the Project Site would experience lower air pollutant impacts from potential sources of pollutants generated by the Project due to atmospheric dispersion effects. Based on a review of the vicinity of the Project Site, the following sensitive receptors were identified:

- 1) AMP Lofts, 695 S. Santa Fe Avenue (multi-family residential)
- 2) Artists’ Lofts, 2101 7th Street (multi-family residential)
- 3) Brick Lofts, 652 Mateo Street (multi-family residential)”<sup>8</sup>

The IS/MND goes on to state that, for the purposes of assessing pollution concentrations upon sensitive receptors, the SCAQMD has developed LSTs that are based on the number of pounds of emissions per day that can be generated by a project that would cause or contribute to adverse localized air quality impacts.<sup>9</sup> For the Criteria Pollutants assessed under CEQA, this is correct. For TACs, there are no LSTs, not levels of significance based on the pounds per day, and the determination of a significance threshold is based on a *quantitative risk analysis* that requires the City to perform a multistep, quantitative health risk analysis.

Under the TAC section of the air quality analysis the City<sup>10</sup> goes on to state that the “Project’s construction activities would generate toxic air contaminants (“TACs”) in the form of diesel particulate matter (“DPM”) emissions associated with the use of heavy trucks and construction

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<sup>8</sup> City of Los Angeles. 2021. Initial Study/Mitigated Negative Declaration For 655 Mesquit Street Project. Case Number ENV-2020-6829-EAF, CPC-2020-6828-GPA-ZC-HD-SPR-MCUP. Pg 81.

<sup>9</sup> *ibid.*

<sup>10</sup> City of Los Angeles. 2021. Initial Study/Mitigated Negative Declaration For 655 Mesquit Street Project. Case Number ENV-2020-6829-EAF, CPC-2020-6828-GPA-ZC-HD-SPR-MCUP. Pg 84.

equipment during construction...“Individual Cancer Risk” is the likelihood that a person continuously exposed to concentrations of TACs over a 70-year lifetime will contract cancer based on the use of standard risk assessment methodology. Given the short-term construction schedule of approximately 24 months, the Project would not result in a long-term (i.e., 70-year) source of TAC emissions. No residual emissions and corresponding individual cancer risk are anticipated after construction. Because there is such a short-term exposure period (24 out of 840 months of a 70-year lifetime), health risks associated with DPM emissions during construction would be less than significant.”

TACs, including DPM, contribute to a host of respiratory impacts and may lead to the development of various cancers. Failing to quantify those impacts places the community at risk for unwanted adverse health impacts. *Even brief exposures to the TACs could lead to the development of adverse health impacts over the life of an individual.*

Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. TACs are airborne substances that are capable of causing short-term (acute) and/or long-term (chronic or carcinogenic, i.e., cancer causing) adverse human health effects (i.e., injury or illness). TACs include both organic and inorganic chemical substances. The current California list of TACs includes approximately 200 compounds, including particulate emissions from diesel-fueled engines.

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.<sup>11,12,13</sup> Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.<sup>14</sup> Exposure to DPM increases the risk

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<sup>11</sup> California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB%20identified%20DPM,and%20other%20adverse%20health%20effects.>

<sup>12</sup> U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

<sup>13</sup> Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; [http://www.edf.org/documents/4941\\_cleanerdieselhandbook.pdf](http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf), accessed July 5, 2020.

<sup>14</sup> California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.



of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls, immunological allergic reactions, and airway constriction.<sup>15</sup> DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM<sub>2.5</sub> and PM<sub>10</sub>.<sup>16</sup>

The analysis performed by the City fails to meet even the basic requirements of a health risk analysis and clearly misstates the issues regarding health risk analysis. Firstly, the City is intentionally misstating how the individual risk is calculated for any given exposure. A review of all the relevant guidance from regulatory agencies involved in health risk analysis confirms that nowhere is an individual cancer risk calculated assuming a 70-year exposure. The relevant major federal and state guidance documents and/or information sources that can be cited about the preparation of a health risk analysis and the input variables include:

- Human Health Risk Assessment Note Number 1: Recommended DTSC Default Exposure Factors for Use in Risk Assessment at California Hazardous Waste Sites and Permitted Facilities. 2019. (DTSC / Human and Ecological Risk Office [HERO], April 2019);
- Human Health Risk Assessment Note Number 3: DTSC-modified Screening Levels (DTSC-SLs). 2020. (DTSC/HERO, June 2020);
- Preliminary Endangerment Assessment Guidance Manual. 2015. (California Environmental Protection Agency [Cal/EPA] DTSC, original 1994, second printing 1999, third printing 2015);
- Supplemental Guidance for Human Health Multimedia Risk Assessments of Hazardous Waste Sites and Permitted Facilities. DTSC, Office of Scientific Affairs. 1996. (Cal/EPA DTSC, original 1992, corrected and reprinted 1996);
- Risk Assessment Guidance for Superfund (RAGS) Volume I: Human Health Evaluation Manual (Part A) (U.S. EPA 1989a);
- RAGS Volume I: Human Health Evaluation Manual (Part B, Development of Risk-based Preliminary Remediation Goals) (U.S. EPA 1991);
- RAGS Volume I: Human Health Evaluation Manual (Part C, Risk Evaluation of Remedial Alternatives) (U.S. EPA 1991);
- RAGS Volume I: Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments) (U.S. EPA 2001);

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<sup>15</sup> Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.

<sup>16</sup> Health & Safety Code § 39655(a) (defining "toxic air contaminant" as air pollutants "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. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant.")

- RAGS, Volume I: Human Health Evaluation Manual (Part E, Supplemental Guidance for Dermal Risk Assessment) (U.S. EPA 2004);
- RAGS, Volume I: Human Health Evaluation Manual (Part F, Supplemental Guidance for Inhalation Risk Assessment) (U.S. EPA 2009);
- Regional Screening Levels (RSLs) (U.S. EPA, 2020)
- Guidance for Data Useability [sic] in Risk Assessment (U.S. EPA 1992c);
- National Oil and Hazardous Substances Pollution Contingency Plan (U.S. EPA 1990b);
- Exposure Factors Handbook (U.S. EPA 2011);
- Child-Specific Exposure Factors Handbook (U.S. EPA 2008);
- Dermal Exposure Assessment, Principles and Applications (Interim Report) (U.S. EPA 1992a);
- Integrated Risk Information System (IRIS) database (U.S. EPA 2012);
- Soil Screening Guidance (U.S. EPA 1996a, b); and
- Superfund Exposure Assessment Manual (U.S. EPA 1988c).


Nowhere in those documents is there a reference to a 70-year exposure. The City's analysis is incorrect and entirely unsupported. The City must correct this significant error in the MND's air quality analysis. In addition they must perform the necessary quantitative health risk analysis as described in the documents cited above.

Secondly, while the potential exposure period for the closest sensitive receptor may be only 24 months, the inherent toxicity of the TACs requires the City to first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern. Following that analysis, then the City can make a determination of the relative significance of the emissions. The City's failure to perform such an analysis is clearly a major flaw in there IS/MND and may be placing the residents of the adjacent structures at risk from the construction and operational phases of the Project.

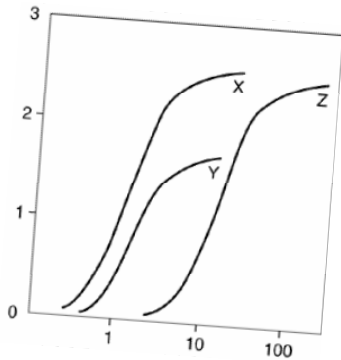
## Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the conditional exemption is approved. The City must re-evaluate the significant impacts identified in this letter by requiring the preparation of a draft environmental impact report.

Sincerely,



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*Principal Toxicologist*

**Toxicology/Exposure Assessment Modeling**

**Risk Assessment/Analysis/Dispersion Modeling**

**Education:**

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

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

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

**Professional Experience:**

Dr. Clark is a well recognized toxicologist, air modeler, and health scientist. He has 20 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

Significant projects performed by Dr. Clark include the following:

**LITIGATION SUPPORT**

**Case: James Harold Caygle, et al, v. Drummond Company, Inc. Circuit Court for the Tenth Judicial Circuit, Jefferson County, Alabama. Civil Action. CV-2009**

**Client: Environmental Litigation Group, Birmingham, Alabama**

Dr. Clark performed an air quality assessment of emissions from a coke factory located in Tarrant, Alabama. The assessment reviewed include a comprehensive review of air quality standards, measured concentrations of pollutants from factory, an inspection of the facility and detailed assessment of the impacts on the community. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Rose Roper V. Nissan North America, et al. Superior Court of the State Of California for the County Of Los Angeles – Central Civil West. Civil Action. NC041739**

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

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to multiple chemicals, including benzene, who later developed a respiratory distress. A review of the individual's medical and occupational history was performed to prepare an exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to respiratory irritants. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: O'Neil V. Sherwin Williams, et al. United States District Court Central District of California**

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

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to petroleum distillates who later developed a bladder cancer. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Summary judgment for defendants.**

**Case: Moore V., Shell Oil Company, et al. Superior Court of the State Of California for the County Of Los Angeles**

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

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to chemicals while benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Raymond Saltonstall V. Fuller O'Brien, KILZ, and Zinsser, et al. United States District Court Central District of California**

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

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Richard Boyer and Elizabeth Boyer, husband and wife, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-7G.**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: JoAnne R. Cook, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-9R**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of an individual exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Patrick Allen And Susan Allen, husband and wife, and Andrew Allen, a minor, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-W**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Michael Fahey, Susan Fahey V. Atlantic Richfield Company, et al. United States District Court Central District of California Civil Action Number CV-06 7109 JCL.**

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

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Constance Acevedo, et al., V. California Spray-Chemical Company, et al., Superior Court of the State Of California, County Of Santa Cruz. Case No. CV 146344**

Dr. Clark performed a comprehensive exposure assessment of community members exposed to toxic metals from a former lead arsenate manufacturing facility. The former manufacturing site had undergone a DTSC mandated removal action/remediation for the presence of the toxic metals at the site. Opinions were presented regarding the elevated levels of arsenic and lead (in attic dust and soils) found throughout the community and the potential for harm to the plaintiffs in question.

**Case Result: Settlement in favor of defendant.**

**Case: Michael Nawrocki V. The Coastal Corporation, Kurk Fuel Company, Pautler Oil Service, State of New York Supreme Court, County of Erie, Index Number I2001-11247**

**Client: Richard G. Berger Attorney At Law, Buffalo, New York**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the



known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Judgement in favor of defendant.**

## **SELECTED AIR MODELING RESEARCH/PROJECTS**

### **Client – Confidential**

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

### **Client – Confidential**

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

### **Client – Los Angeles Alliance for a New Economy (LAANE), Los Angeles, California**

Dr. Clark is advising the LAANE on air quality issues related to current flight operations at the Los Angeles International Airport (LAX) operated by the Los Angeles World Airport (LAWA) Authority. He is working with the LAANE and LAX staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

**Client – City of Santa Monica, Santa Monica, California**

Dr. Clark is advising the City of Santa Monica on air quality issues related to current flight operations at the facility. He is working with the City staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

**Client: Omnitrans, San Bernardino, California**

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

**Client: Confidential, San Francisco, California**

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

**Client: Confidential, Minneapolis, Minnesota**

Prepared human health risk assessment of workers exposed to VOCs from neighboring petroleum storage/transport facility. Reviewed the systems in place for distribution of petroleum hydrocarbons to identify chemicals of concern (COCs), prepared comprehensive toxicological summaries of COCs, and quantified potential risks from carcinogens and non-carcinogens to receptors at or adjacent to site. This evaluation was used in the support of litigation.

**Client – United Kingdom Environmental Agency**

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

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

## **EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS**

### **Client: Ameren Services, St. Louis, Missouri**

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

### **Client: City of Santa Clarita, Santa Clarita, California**

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

### **Client: Confidential, Los Angeles, California**

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

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

**Client – Confidential, Los Angeles, California**

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

**PUBLIC HEALTH/TOXICOLOGY**

**Client: Brayton Purcell, Novato, California**

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

**Client: Confidential, San Francisco, California**

Identified and analyzed fifty years of epidemiological literature on workplace exposures to heavy metals. This research resulted in a summary of the types of cancer and non-cancer diseases associated with occupational exposure to chromium as well as the mortality and morbidity rates.

**Client: Confidential, San Francisco, California**

Summarized major public health research in United States. Identified major public health research efforts within United States over last twenty years. Results were used as a briefing tool for non-public health professionals.

**Client: Confidential, San Francisco, California**

Quantified the potential multi-pathway dose received by humans from a pesticide applied indoors. Part of team that developed exposure model and evaluated exposure concentrations in a comprehensive report on the plausible range of doses received by a specific person. This evaluation was used in the support of litigation.

**Client: Covanta Energy, Westwood, California**

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

**Client – United Kingdom Environmental Agency**

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

**Client – Confidential, Los Angeles, California**

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

**Client – Confidential, Los Angeles, California**

Prepared comprehensive evaluation of methyl *tertiary* butyl ether (MTBE) in municipal drinking water system. MTBE is a chemical added to gasoline to increase the octane

rating and to meet Federally mandated emission criteria. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MTBE. The results of the evaluation have been used as a briefing tool for non-public health professionals.

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

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

**Client: Confidential, Los Angeles, California**

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

**Client: Kaiser Venture Incorporated, Fontana, California**

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

**RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS**

**Client: Confidential, Atlanta, Georgia**

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

**Client: Confidential, Escondido, California**

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

**Client: Confidential, San Francisco, California**

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

**Client: Confidential, Bogotá, Columbia**

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

**Client: Confidential, Los Angeles, California**

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

**Client: Confidential, Los Angeles, California**

Managed remedial investigation (RI) of heavy metals and volatile organic chemicals (VOCs) for a 15-acre former manufacturing facility. The RI investigation of the site included over 800 different sampling locations and the collection of soil, soil gas, and groundwater samples. The site is currently used as a year round school housing approximately 3,000 children. The Remedial Investigation was performed in a manner

that did not interrupt school activities and met the time restrictions placed on the project by the overseeing regulatory agency. The RI Report identified the off-site source of metals that impacted groundwater beneath the site and the sources of VOCs in soil gas and groundwater. The RI included a numerical model of vapor intrusion into the buildings at the site from the vadose zone to determine exposure concentrations and an air dispersion model of VOCs from the proposed soil vapor treatment system. The Feasibility Study for the Site is currently being drafted and may be used as the basis for granting closure of the site by DTSC.

**Client: Confidential, Los Angeles, California**

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

**Client: Confidential, Los Angeles, California**

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

Client –Dominguez Energy, Carson, California

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

**Kaiser Ventures Incorporated, Fontana, California**

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



ANR Freight - Los Angeles, California

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

**Kaiser Ventures Incorporated, Fontana, California**

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

**Unocal Corporation - Los Angeles, California**

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

**Client: Confidential, Los Angeles, California**

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

**Client: Confidential, San Francisco, California**

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

**Client: Confidential, San Francisco, California**

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

**IT Corporation, North Carolina**

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

**Professional Associations**

American Public Health Association (APHA)

Association for Environmental Health and Sciences (AEHS)

American Chemical Society (ACS)

California Redevelopment Association (CRA)

International Society of Environmental Forensics (ISEF)

Society of Environmental Toxicology and Chemistry (SETAC)

**Publications and Presentations:**

**Books and Book Chapters**

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Baker, J.; **Clark, J.J.J.**; Stanford, J.T. 1994. Ex Situ Remediation of Diesel Contaminated Railroad Sand by Soil Washing. Principles and Practices for Diesel Contaminated Soils, Volume III. P.T. Kostecki, E.J. Calabrese, and C.P.L. Barkan, eds. Amherst Scientific Publishers, Amherst, MA. pp 89-96.

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- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** (2007). "Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." *Environmental Research*. 105:194-199.
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- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13<sup>th</sup> Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2004. "The Value Of An Odor Quality Classification Scheme For Urban Odor" WEFTEC 2004. 77th Annual Technical Exhibition & Conference October 2 - 6, 2004, Ernest N. Morial Convention Center, New Orleans, Louisiana.
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## **EXHIBIT 2**

# ADAMS BROADWELL JOSEPH & CARDOZO

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December 29, 2021

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### **VIA ONLINE SUBMISSION**

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

### **VIA EMAIL**

Stephanie Escobar, Planning Assistant ([stephanie.escobar@lacity.org](mailto:stephanie.escobar@lacity.org))  
Vince Bertoni, Director of Planning ([vince.bertoni@lacity.org](mailto:vince.bertoni@lacity.org))

**Re: Appeal of Advisory Agency Approval of the Vesting Tentative  
Tract Map for the 655 Mesquit Project, Case Number: VTT-83288;  
Related Cases CPC-2020-6828-GPA-ZC-HD-SPR-MCUP / ENV-  
2020-6829-EAF**

Dear Commissioners, Planning Department, Ms. Escobar, Mr. Bertoni:

On behalf of the Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”), we submit this appeal of the Advisory Agency’s December 22, 2021 approval of Vesting Tentative Tract Map No. 83288 (map date-stamped September 5, 2021) (“VTTM”) for the 655 Mesquit Project, to be located at 640-657 South Mesquit Street, 1585 East Jesse Street, and 640-648 South Santa Fe Avenue, Case Number: VTT-83288; Related Cases CPC-2020-6828-GPA-ZC-HD-SPR-MCUP / ENV-2020-6829-EAF (collectively, “Project”), proposed by 655 Mesquit, LLC (“Applicant”).

The Project proposes to redevelop a surface parking lot on the existing 640 South Santa Fe Avenue site (“Project Site”) into a 14-story commercial building with approximately 188,954 square feet of floor area comprised of 184,629 square feet of office uses and approximately 4,325 square feet of ground floor commercial uses.<sup>1</sup> As approved by the Advisory Agency, the VTTM authorized the subdivision

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<sup>1</sup> City of Los Angeles Department of City Planning, Mitigated Negative Declaration: 655 Mesquit Street Project Case Number: ENV-2020-6829-EAF, CPC-2020-6828-GPA-ZC-HD-SPR-MCUP L5691-005j

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of five (5) parcels into eight (8) lots, including one (1) master ground lot and seven (7) airspace lots, in the Central City North Community Plan at 640-657 South Mesquit Street, 15885 East Jesse Street, and 640-648 South Santa Fe Avenue.<sup>2</sup>

On September 22, 2021, the Advisory Agency conducted a public hearing to consider the VTTM. On September 23, 2021, the Department of City Planning issued a Mitigated Negative Declaration (“MND”) for the Project (MND No. ENV-2020-6829-MND) pursuant to the California Environmental Quality Act<sup>3</sup> (“CEQA”).<sup>4</sup> The public comment period on the MND began on September 23, 2021 and ended on October 13, 2021.<sup>5</sup> CREED LA submitted written comments and expert comments on the MND on October 13, 2021 (“MND Comments”) explaining that the MND failed to comply with CEQA and land use regulations.<sup>6</sup>

On December 22, 2021, the Advisory agency issued a Letter of Determination (“LOD”) approving the VTTM.<sup>7</sup> The LOD includes CEQA findings, Subdivision Map Act findings, and states that the Advisory Agency considered and adopted the MND.<sup>8</sup> However, the Advisory Agency did not consider the public comments filed on the MND, which postdated the Advisory Agency hearing on the VTTM, and there are no responses to MND comments contained in the LOD. The City Planning Commission (“CPC”) is tentatively scheduled to consider the Project’s remaining entitlements and the MND at a January 27, 2022, hearing.

CREED LA hereby appeals all actions taken by the Advisory Agency described in the LOD. This letter supplements CREED LA’s Appeal Application, filed concurrently herewith. In accordance with City requirements, this appeal is also accompanied by an appeal filing fee, and a copy of the LOD. The appeal is based on each of the reasons set forth herein and in the attached and referenced

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(September 2021) <https://planning.lacity.org/odocument/4ff91485-df08-4bc2-8f02-87f9c4255ab1/ENV-2020-6829.pdf>.

<sup>2</sup> LOD, p. 1.

<sup>3</sup> Pub. Res. Code (“PRC”) §§ 2100 et seq.; 14 Cal. Code Regs. (“CCR”) §§ 15000 et seq.

<sup>4</sup> LOD, p. 12.

<sup>5</sup> [https://planning.lacity.org/odocument/1449ad71-431a-42d9-a6ea-dec20e3a330f/Pub\\_092321.htm](https://planning.lacity.org/odocument/1449ad71-431a-42d9-a6ea-dec20e3a330f/Pub_092321.htm)

(Public Notice re Intent to Adopt MND for 655 Mesquit Project).

<sup>6</sup> See **Exhibit 1**, 10/13/21 CREED LA Comments on the 655 Mesquit Project; Case Number: ENV-2020-6829-EAF CPC-2020-6828-GPA-ZC-HD-SPR-MCUP.

<sup>7</sup> See 12/22/21 Letter of Determination VTTM No. 83288 (“LOD”), available at <https://planning.lacity.org/pdiscaseinfo/document/MTYwMzk0/1823a02c-5d95-4003-95c4-258347c32f18/pdd>.

<sup>8</sup> LOD, pp. 12-17.

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exhibits. CREED LA reserves the right to supplement this appeal and the reasons therefore at the hearing on the appeal and at any subsequent City hearings and proceedings related to the Project.<sup>9</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, 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.

## **I. REASONS FOR APPEAL**

CREED LA appeals all actions taken by the Advisory Agency regarding the Project as described in the LOD dated December 22, 2021. The reasons for this appeal are set forth in the attached comments and exhibits, including CREED LA's MND comment letter dated October 13, 2021, and the expert comments of air quality and hazards expert James Clark, Ph.D. Reasons for the appeal include violations of CEQA, State and local land use codes, and of the Subdivision Map Act. We incorporate by reference all comments included in Exhibit 1. A brief summary of issues is below. CREED LA respectfully requests that the CPC consider all of our comments on the Project in their entirety in responding to this appeal.

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<sup>9</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.  
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**A. An EIR is Required Because there is Substantial Evidence Supporting a Fair Argument that the Project Will Have Significant, Unmitigated Adverse Environmental Impacts**

A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.<sup>10</sup> “[S]ignificant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.”<sup>11</sup> An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.”<sup>12</sup> Substantial evidence, for purposes of the fair argument standard, includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”<sup>13</sup>

CREED LA’s attached MND Comments, including the comments of its experts, presented direct and substantial evidence to the City raising a fair argument that the Project will have significant impacts on air quality, GHG emissions, land use, noise, and hazardous materials that are not fully disclosed or mitigated by the MND. An EIR must be prepared to fully disclose and analyze these impacts and mitigate these significant impacts to less than significant levels.

**B. The Advisory Agency’s CEQA Findings Were Premature and Unsupported**

The LOD includes CEQA findings which state that the Advisory Agency considered and adopted the MND, and that the Agency found that it reflects the independent judgment of the lead agency and determined that the Project would not have a significant effect upon the environment provided the potential impacts are mitigated to a less than significant level, as described in the MND.<sup>14</sup> The Advisory Agency’s CEQA findings and purported “adoption” of the MND were premature, because the City has not yet considered or responded to comments filed on the

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<sup>10</sup> PRC § 21151; 14 CCR § 15064(f); *Citizens for Responsible Equitable Env’tl Dev. v. City of Chula Vista* (“CREED”) (2011) 197 Cal.App.4th 327, 330-31; *Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319 (“CBE v. SCAQMD”).

<sup>11</sup> PRC § 21068; 14 CCR § 15382; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1581.

<sup>12</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.

<sup>13</sup> PRC § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.

<sup>14</sup> LOD, p. 12.

MND, failed to require an EIR for the Project, and the majority of the Project's entitlements have not yet been considered or approved by the CPC or City Council.

It is well-settled that certification or adoption of a CEQA document cannot be issued before a project has been approved.<sup>15</sup> This is consistent with CEQA's requirement that a CEQA document consider the "whole of an action."<sup>16</sup> This includes all phases of a project that are reasonably foreseeable.<sup>17</sup> As the courts have held, "[t]he purpose of CEQA is to inform the public of plans, so that the public can help guide decision makers about environmental choices. It is not the purpose of CEQA to foment prophylactic litigation."<sup>18</sup>

The Advisory Agency is an interim decision maker for the Project with authority only to approve the VTTM. It is not the decision maker for the Project's other entitlements. Nor did the Advisory Agency consider the public comments submitted on the MND, or prepare responses to those comments, as required by CEQA. The Advisory Agency therefore lacked the capacity to adopt the MND for the Project as a whole. The Advisory Agency also relied on a patently inadequate CEQA document which does not adequately analyze and mitigate the Project's environmental and public health impacts, and failed to require staff to prepare an EIR. The CPC should vacate the Advisory Agency's premature and unsupported CEQA findings.

### **C. The Advisory Agency's Subdivision Map Act Findings Were Unsupported**

As discussed in CREED LA's MND Comments, there is substantial evidence supporting a fair argument that the Project is likely to have, potentially significant impacts on air quality, GHG emissions, land use, noise, and hazardous materials that are not fully disclosed or mitigated by the MND. An EIR is required for the Project. As a result of these unmitigated impacts, the Advisory Agency lacked

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<sup>15</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>16</sup> 14 CCR § 15378; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.

<sup>17</sup> *Id.*

<sup>18</sup> *Endangered Habitats League, Inc. v. State Water Resources Control Bd.* (1997) 63 Cal.App.4th 227, 242

substantial evidence to support the Map Act's required factual findings to approve the VTTM, which require the Advisory Agency to find that a proposed subdivision is consistent with the general plan/specific plan, and does not have any detrimental environmental or public health effects.<sup>19</sup>

The purpose of the Map Act is to regulate and control design and improvement of subdivisions with proper consideration for their relation to adjoining areas, to require subdividers to install streets and other improvements, to prevent fraud and exploitation, and to protect both the public and purchasers of subdivided lands.<sup>20</sup> Before approving a tentative map, the Map Act requires the agency's legislative body to make findings that the proposed subdivision map, together with the provisions for its design and improvement, is consistent with the general plan and any specific plan.<sup>21</sup> The Map Act also requires the agency's legislative body to deny a proposed subdivision map in any of the following circumstances:

□

(a) the proposed map is ***not consistent with applicable general and specific plans*** as specified in Section 65451.

□(b) the design or improvement of the proposed subdivision is ***not consistent with applicable general and specific plans***.

(c) the site is not physically suitable for the type of development.

(d) the site is not physically suitable for the proposed density of development.

(e) the ***design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat***.

(f) the ***design of the subdivision or type of improvements is likely to cause serious public health problems***.

(g) the ***design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision***. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority

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<sup>19</sup> Gov Code §§66473.5, 66474.

<sup>20</sup> *Pratt v. Adams* (1964) 229 Cal.App.2d 602.

<sup>21</sup> Gov Code § 66473.5.

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is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.<sup>22</sup>

CREED LA and its experts provided substantial evidence demonstrating that the Project is likely to have significant, unmitigated impacts in several of these areas. The Advisory Agency failed to consider CREED LA's evidence before approving the VTTM, and failed to require an EIR for the Project which fully discloses and mitigates the Project's significant impacts. The Advisory Agency's findings that none of the conditions requiring denial of the VTTM under the Map Act existed were therefore not supported with substantial evidence.

The CPC should vacate the Advisory Agency's VTTM approval pursuant to, at a minimum, Government Code Sections 66473.5 and 66474(a), (b), and (f).

## II. CONCLUSION

CREED LA respectfully requests that the CPC set a hearing on this appeal concurrently with the CPC's hearing on the remainder of the Project's entitlements. At the hearing, CREED LA respectfully requests that the CPC vacate the Advisory Agency's approval of the VTTM, CEQA findings, Map Act findings, and all other actions taken by the Advisory Agency as described in the LOD. The CPC should also direct City staff to prepare an EIR for the Project.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Christina Caro', is written over a light blue circular stamp.

Christina Caro  
Kelilah Federman

CMC:lj1

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<sup>22</sup> Gov. Code § 66474 (emphasis added).  
L5691-005j

# EXHIBIT 1

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October 13, 2021

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**Re: Comments on the 655 Mesquit Project; Case Number: ENV-2020-6829-EAF CPC-2020-6828-GPA-ZC-HD-SPR-MCUP**

Dear Ms. Escobar and Mr. Bertoni:

These comments are submitted on behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”) regarding the Mitigated Negative Declaration (“MND”) prepared by the City of Los Angeles (“City”) for the 655 Mesquit Street Project (Case No. CPC-2020-6828-GPA-ZC-HD-SPR-MCUP; Environmental Case No. ENV-2020-6829-EAF) (“Project”), proposed by 655 Mesquit, LLC (“Applicant”).

The Project proposes to redevelop a surface parking lot on the existing 640 S. Santa Fe Avenue site (“Project Site”) into a 14-story commercial building with approximately 188,954 square feet of floor area comprised of 184,629 square feet of office uses and approximately 4,325 square feet of ground floor commercial uses.<sup>1</sup>

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<sup>1</sup> City of Los Angeles Department of City Planning, Mitigated Negative Declaration: 655 Mesquit Street Project Case Number: ENV-2020-6829-EAF, CPC-2020-6828-GPA-ZC-HD-SPR-MCUP L5691-004acp

The Project Site is located on Assessor Parcel Number (APN) 5164-015-022 at 635 - 657 South Mesquit Street, 632 - 648 South Santa Fe Avenue, and 1585 East Jesse Street, Los Angeles, CA 90021. The Project would result in a total proposed floor area of 296,178 square feet for the entire Project Site, resulting in a total Floor Area Ratio (“FAR”) of 4.3:1. The Project site is located within the Central City North Community Plan Area within the City. The Project site is under the General Plan Designation Heavy Manufacturing and is zoned as M3-1-RIO within the River Implementation Overlay District (“RIO”).

We have reviewed the MND, its technical appendices, and reference documents with assistance of CREED LA’s expert consultant, whose comments and qualifications are attached. Based on our review of the MND, it is clear that the MND fails as an informational document under CEQA and lacks substantial evidence to support its conclusions that the Project’s significant impacts would be mitigated to the greatest extent feasible.

There is also substantial evidence supporting a fair argument that the Project’s potentially significant environmental impacts are far more extensive than disclosed in the MND. CREED LA and their expert consultant have identified numerous potentially significant impacts that the MND either mischaracterizes, underestimates, or fails to identify. Moreover, many of the mitigation measures described in the MND will not, in fact, mitigate impacts to the extent claimed.

We prepared these comments with the assistance of air quality and hazards expert James Clark, Ph.D. Dr. Clark’s technical comments and curriculum vitae are attached hereto as Exhibit A.<sup>2</sup> Dr. Clark concludes that the City failed to conduct adequate analysis regarding the hazards and hazardous materials on the Project site. Dr. Clark also determined that Project construction emissions will exceed applicable significance thresholds, and that Greenhouse Gas (“GHG”) emissions from Project construction and operation are underestimated. The MND fails to accurately disclose the severity of these impacts and fails to effectively mitigate them.

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(September 2021) <https://planning.lacity.org/odocument/4ff91485-df08-4bc2-8f02-87f9c4255ab1/ENV-2020-6829.pdf>.

<sup>2</sup> See **Exhibit A**, James Clark, Comments on 655 Mesquit Street Project Case Number: ENV-2020-6829-EAF CPC-2020-6828-GPA-ZC-HD-SPR-MCUP (“Clark Comments”).

L5691-004acp



Dr. Clark's comment letter and all attachments thereto are incorporated by referenced as if fully set forth herein.<sup>3</sup> The City must address and respond to the expert comments separately.

## 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, 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 including John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias 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. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

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<sup>3</sup> CREED LA reserves the right to supplement these comments, and to file further comments at any and all future proceedings and hearings related to the Project. 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.

## I. LEGAL BACKGROUND

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.<sup>4</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>5</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>6</sup>

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.<sup>7</sup> CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the “fair argument” standard. Under that standard, a lead agency “shall” prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.<sup>8</sup>

In contrast, a mitigated negative declaration may be prepared only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

- (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur,*
- and (2) there is *no substantial evidence* in light of the whole

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<sup>4</sup> See Pub. Resources Code § 21000; CEQA Guidelines § 15002.

<sup>5</sup> *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).

<sup>6</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>7</sup> See Pub. Resources Code § 21100.

<sup>8</sup> Pub. Resources Code §§ 21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

record before the public agency that the project, as revised, *may* have a significant effect on the environment.<sup>9</sup>

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”<sup>10</sup> The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.<sup>11</sup> An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.<sup>12</sup>

“Substantial evidence” required to support a fair argument is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”<sup>13</sup> According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064, subdivision (f):

[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.”<sup>14</sup> Deferring

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<sup>9</sup> Pub. Resources Code § 21064.5 (emphasis added).

<sup>10</sup> See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

<sup>11</sup> *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

<sup>12</sup> *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

<sup>13</sup> CEQA Guidelines § 15384(a).

<sup>14</sup> CEQA Guidelines § 15126.4(a)(2).

formulation of mitigation measures to post-approval studies is generally impermissible.<sup>15</sup> Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.<sup>16</sup> If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.<sup>17</sup> Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report's recommendations is insufficient to meet the standard for properly deferred mitigation.<sup>18</sup>

With respect to this Project, the MND fails to satisfy the basic purposes of CEQA. The MND fails to adequately disclose, investigate, and analyze the Project's potentially significant impacts, and fails to provide substantial evidence to conclude that impacts will be mitigated to a less than significant level. Because the MND lacks basic information regarding the Project's potentially significant impacts, the MND's conclusion that the Project will have a less than significant impact on the environment is unsupported.<sup>19</sup> The City failed to gather the relevant data to support its finding of no significant impacts. Moreover, substantial evidence shows that the Project may result in potentially significant impacts. Therefore, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

## II. THE MND FAILS TO PROVIDE A COMPLETE AND ACCURATE PROJECT DESCRIPTION

CEQA requires that an EIR "set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact."<sup>20</sup> Similarly, an MND must present a complete and accurate description of the project

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<sup>15</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code § 21061.

<sup>16</sup> *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical*, *supra*, 29 Cal.App.4th at p. 1604, fn. 5.

<sup>17</sup> *Gentry*, 36 Cal.App.4th at 1393.

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

<sup>19</sup> PRC § 21064.5.

<sup>20</sup> *San Joaquin Raptor Rescue Center v. County of Merced* 149 Cal.App.4th 645, 654 (citing 14 C.C.R. § 15124).

under consideration.<sup>21</sup> “The scope of the environmental review conducted for the initial study must include the entire project ... [A] correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA.”<sup>22</sup> A negative declaration is “inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis. An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency’s action. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance.”<sup>23</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>24</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 does not mean each separate governmental approval.<sup>25</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>26</sup> As explained below, the Clark Comments highlight numerous deficiencies in the MND’s Project description.

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

The MND states that the Project will allow “the sale of full line alcoholic beverages within four restaurants and bars” on the Project site.<sup>27</sup> However, the

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<sup>21</sup> 14 C.C.R. § 15063(d)(1) (requiring an initial study to include a description of the project).

<sup>22</sup> *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267 (internal quotations and citations omitted).

<sup>23</sup> *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406 (internal quotations and citations omitted).

<sup>24</sup> 14 C.C.R. 15378(a).

<sup>25</sup> CEQA Guidelines § 15378.

<sup>26</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>27</sup> MND, p. 50.

Project description fails to identify the accompanying activities that would result in noise impacts, such as live or recorded music, or boisterous patrons that may impact sensitive receptors at the AMP Loft property.

The AMP Lofts is a multi-family residential property located 260 feet southwest of the Project site.<sup>28</sup> The resulting noise from Project operation may require mitigation to reduce adverse impacts to neighboring residents, specifically the AMP Lofts residents. The MND fails to disclose whether the Project anticipates the use of sound systems, alcohol on balconies on the upper floors and in the paseo courtyard, and other sources of significant noise impacts, thus failing to disclose a potentially significant operational noise impact.

The MND'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 and erecting sound barriers, may be necessary to reduce these impacts, but are absent from the MND. The MND's conclusion that the Project will result in less than significant operational noise impacts, with no mitigation required, is not supported by substantial evidence.

### **III. AN EIR IS REQUIRED FOR THE PROJECT BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT WILL HAVE SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS**

A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.<sup>29</sup> “[S]ignificant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.”<sup>30</sup> An effect on the environment need not be “momentous” to meet the

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<sup>28</sup> *Id.* at 81; 82.

<sup>29</sup> PRC § 21151; 14 CCR § 15064(f); *Citizens for Responsible Equitable Env'tl Dev. v. City of Chula Vista* (“*CREED*”) (2011) 197 Cal.App.4th 327, 330-31; *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319 (“*CBE v. SCAQMD*”).

<sup>30</sup> PRC § 21068; 14 CCR § 15382; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1581.

CEQA test for significance; it is enough that the impacts are “not trivial.”<sup>31</sup> Substantial evidence, for purposes of the fair argument standard, includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”<sup>32</sup>

CREED LA’s experts have presented direct and substantial evidence raising a fair argument that the Project will have significant impacts on air quality, GHG emissions, noise, and hazardous materials. An EIR must be prepared to further evaluate and mitigate the significant impacts to less than significant levels.

#### **A. The City Lacks Substantial Evidence to Support the MND’s Conclusion that the Project Would Result in Less Than Significant Health Risk Impacts**

CEQA requires a detailed analysis of the public health impacts from air pollutants that would be generated by a development project.<sup>33</sup> The City’s analysis of the Project’s health risk from construction emissions is inadequate. The MND concludes, absent substantial evidence, that the Project’s construction air quality emission impacts would be less than significant.<sup>34</sup> The City did not, however, conduct a health risk analysis (“HRA”) for the Project. Instead, the City concludes, absent substantial evidence, that “health risks associated with DPM emissions during construction would be less than significant” due to the short-term exposure of sensitive receptors.<sup>35</sup> Dr. Clark concluded that the City’s assertion that the 24-month exposure is not significant, is not supported by substantial evidence. Dr. Clark emphasized that “[e]ven brief exposures to the [toxic air contaminants] could lead to the development of adverse health impacts over the life of an individual.”<sup>36</sup>

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<sup>31</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.

<sup>32</sup> PRC § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.

<sup>33</sup> *Sierra Club*, 6 Cal.5th at 518–522; 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>34</sup> MND, p. 77.

<sup>35</sup> *Id.* at 84.

<sup>36</sup> Clark Comments, p. 11.

Toxic air contaminants (“TACs”) from Project construction may impact sensitive receptors in the vicinity of the Project site including:

- 1) AMP Lofts, 695 S. Santa Fe Avenue (multi-family residential)
- 2) Artists’ Lofts, 2101 7th Street (multi-family residential)
- 3) Brick Lofts, 652 Mateo Street (multi-family residential)”<sup>37</sup>

Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. TACs are airborne substances that are capable of causing short-term (acute) and/or long-term (chronic or carcinogenic, i.e., cancer causing) adverse human health effects (i.e., injury or illness). TACs include both organic and inorganic chemical substances. The current California list of TACs includes approximately 200 compounds, including particulate emissions from diesel-fueled engines.

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.<sup>38,39,40</sup> Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.<sup>41</sup> Exposure to DPM increases the risk of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls,

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<sup>37</sup> City of Los Angeles. 2021. Initial Study/Mitigated Negative Declaration For 655 Mesquit Street Project. Case Number ENV-2020-6829-EAF, CPC-2020-6828-GPA-ZC-HD-SPR-MCUP. Pg 81.

<sup>38</sup> Clark Comments, p. 11; California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB%20identified%20DPM,and%20other%20adverse%20health%20effects.>

<sup>39</sup> Clark Comments, p. 11; U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

<sup>40</sup> Clark Comments, p. 11; Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; [http://www.edf.org/documents/4941\\_cleanerdieselhandbook.pdf](http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf), accessed July 5, 2020.

<sup>41</sup> Clark Comments, p. 11; California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.



immunological allergic reactions, and airway constriction.<sup>42</sup> DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM<sub>2.5</sub> and PM<sub>10</sub>.<sup>43</sup>

While the potential exposure period for the closest sensitive receptor may be only 24 months, the inherent toxicity of the TACs requires the City to first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern.<sup>44</sup> Following that analysis, then the City can make a determination of the relative significance of the emissions. The City's failure to perform such an analysis is clearly a major flaw in their MND and may be placing the residents of the adjacent structures at risk from the construction and operational phases of the Project.<sup>45</sup>

The MND lacks substantial evidence to support its conclusion that the Project would result in less than significant health risks from Project construction and operational TACs. The City must prepare an HRA in an EIR for the Project to quantify the Project's health risk impacts and mitigate any significant impacts to the greatest extent feasible.

### **B. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Health Risk from Operational Emissions**

The City's analysis of the Project's operational TAC emissions is flawed.<sup>46</sup> The MND states that the only potential source of toxic air contaminants generated by the Project would be diesel particulate matter ("DPM"), which would be generated by motor vehicles traveling to and from the Project Site. Dr. Clark

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<sup>42</sup> Clark Comments, p. 11; Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.

<sup>43</sup> Clark Comments, p. 11; Health & Safety Code § 39655(a) (defining "toxic air contaminant" as air pollutants "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. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant.")

<sup>44</sup> Clark Comments, p. 13.

<sup>45</sup> Clark Comments, p. 13.

<sup>46</sup> Clark Comments, p. 6.

explains that operation of the Project would generate a relatively small amount of ongoing operational DPM emissions from a minimal number of diesel-fueled vehicles (e.g., delivery trucks), as compared to an industrial oil refinery facility that has numerous heavy-duty industrial-sized equipment and industrial processes.” These statements are not supported by substantial evidence. In reviewing the CalEEMod analysis of the Project, Dr. Clark found that the emergency backup generator is “the most significant source of diesel emissions from the Project site.”<sup>47</sup> The MND fails to adequately analyze and mitigate impacts associated with the emergency backup generator.

Dr. Clark concluded that the diesel backup generator may be permitted to operate up to 200 hours per year, thus the City’s assertion that the backup generator would not exceed 12 hours per year is not supported by substantial evidence.<sup>48</sup> Dr. Clark further determined that the usage of the backup generator may even exceed 200 hours per year, if an extreme heat event occurs. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury.<sup>49</sup>

With the increased instances of extreme heat events, Dr. Clark concludes that the use of the backup generator would result in potentially significant DPM emissions which exceed thresholds. The City must prepare an EIR to analyze the additional operational impacts associated with the emergency backup generator that were not accounted for in the air quality analysis in the MND, and to mitigate any potentially significant health risks to less than significant levels.

### **C. The MND Lacks Substantial Evidence to Support the MND’s Conclusion that the Project Would Result in Less Than Significant Cumulative Air Quality Impacts**

The MND fails to adequately analyze the cumulative impacts associated with Project construction, and the cursory analysis which the MND purports to rely on is unsupported by substantial evidence.

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<sup>47</sup> Clark Comments, p. 7.

<sup>48</sup> *Id.*

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

The MND recognizes that “[a] significant impact may occur if a project adds a considerable cumulative contribution to federal or State non-attainment pollutants.”<sup>50</sup> The California Air Resources Board determined the South Coast Air Basin, the air basin encompassing the Project, is in Non-Attainment for ozone (O<sub>3</sub>), and particulate matter (“PM”) PM<sub>10</sub>, and PM<sub>2.5</sub>.<sup>51</sup> Thus, a cumulative incremental increase in any of these pollutants may result in significant cumulative air quality impacts.

The MND states that the Project would not exceed the daily air quality emission thresholds during the construction or operational phases of the Project. The MND relies on “the approval of the requested discretionary General Plan Amendment and Height District change, [such that] the Project would continue to conform to the zoning and land use designations for the Project site as identified in the General Plan, and as such, would not add emission to the Basin that were not already accounted for in the approved AQMP.”<sup>52</sup> However, this assertion is not supported by a quantitative analysis. The resultant analysis regarding cumulative impacts is therefore not based on substantial evidence.

The MND also fails to analyze the cumulative impacts associated with the General Plan Amendment which will increase density in the Planning Area which will, in turn, result in increased air quality impacts. In particular, the MND fails to quantify the reasonably foreseeable emissions increases, noise, and transportation impacts that may result from the increased density resultant from increasing the FAR from 3:1 to 4.5:1.

Further, the MND describes the Project’s construction impacts as temporary, occurring over a 24-month period, with final buildout occurring in 2025.<sup>53</sup> Dr. Clark determines that two years’ worth of construction emissions is likely to have significant cumulative impacts, and that the MND fails to provide substantial evidence that the Project construction impacts are temporary and less than significant.<sup>54</sup>

This omission in the MND’s analysis is further demonstrated by the MND’s failure to meaningfully analyze identified cumulative construction projects. The

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<sup>50</sup> MND, p. 80.

<sup>51</sup> MND, p. 68 - 69.

<sup>52</sup>

<sup>53</sup> MND, p. 76.

<sup>54</sup> Clark Comments, p. 11.

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Project is being developed “in conjunction with 26 related projects,” three of which would have concurrent construction with the Project.<sup>55</sup> The MND fails to list numerous other nearby projects, which constitutes more than 500,000 square feet of construction overlapping in time.<sup>56</sup> The MND recognizes that “Development of the Project in conjunction with related projects in the Project Site vicinity would result in an increase in construction and operational emissions in an already urbanized area of the City of Los Angeles.”<sup>57</sup> But the MND later concludes, without substantial evidence, that “cumulative air quality impacts would be less than significant.”<sup>58</sup>

The MND’s failure to account for all of the proposed and active construction projects results is both a flawed baseline analysis and a failure to analyze the Project’s cumulative air quality impacts. The MND concludes that the cumulative impacts with regard to air quality would be less than significant, therefore no mitigation measures are required.<sup>59</sup> This assertion is not based on substantial evidence in the record, in violation of CEQA. The City must draft an EIR which provides a legally adequate cumulative impact analysis for the Project.

#### **D. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts From Hazards on the Project Site**

The City’s analysis of the Project impacts from hazards and hazardous material is inadequate and unsupported. The MND relies on the Phase I and Phase II Environmental Site Assessment (“ESA”) reports, which in turn rely on outdated and faulty analysis.<sup>60</sup> Dr. Clark found that the City’s reliance on a Draft Phase I Environmental Site Assessment is misplaced. The site may have significant contamination from its previous use as a “machine and metal stamping shop with paint booths and the railroad line.”<sup>61</sup> Project construction will require extensive earthmoving activities to excavate 2 levels of underground parking. Until the contamination onsite is further investigated, the City cannot conclude that the

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<sup>55</sup> MND, p. 189.

<sup>56</sup> Under Construction – An Ever-Changing Skyline (accessed Oct. 13, 2021) <https://downtownla.com/maps/development/under-construction>.

<sup>57</sup> *Id.* at 86.

<sup>58</sup> *Id.* at 87.

<sup>59</sup> MND p. 87.

<sup>60</sup> Clark Comments, p. 3.

<sup>61</sup> MND, p. 143.

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Project's impacts from hazards on the Project site are less than significant. The City's assertion that Hazards impacts are less than significant is therefore not supported by substantial evidence.

Dr. Clark found that impacts from vapor intrusion may be significant and unmitigated.<sup>62</sup> The Applicant consulted EFI Global to conduct a Phase II subsurface investigation. EFI then utilized the Johnson-Ettinger ("J/E") Vapor Intrusion Model to quantify potential vapor intrusion on the Project site. Based on the J/E Vapor Intrusion Model, EFI concluded that the detected soil vapor levels did not represent an unacceptable risk to human health. As Dr. Clark explains, the California Department of Toxic Substances Control has since recommended that "Site-specific attenuation factors derived from mathematical models, such as the Johnson and Ettinger model, are not recommended for the initial screening of occupied buildings."<sup>63</sup> The Applicant's reliance on this analysis, and the City's conclusion that the hazard impacts are less than significant is not based on substantial evidence.

Dr. Clark conducted accurate modeling for the Project's soil vapor inhalation risk. Dr. Clark concluded that, for chemicals of concern on the Project site, the maximum risk of soil vapor intrusion exceeds the significance threshold for carcinogenic chemicals of 10 in 1,000,000 for commercial workers onsite. Dr. Clark further concluded that the maximum hazard index from soil vapor intrusion exceeds the significance threshold of 1 for commercial workers onsite.<sup>64</sup> These are significant impacts which the MND fails to disclose. Dr. Clark concludes that the City must correct these errors and address these significant hazardous waste issues on site by implementing a remedial strategy to remove the residual soil vapor, mitigating the risk by requiring the installation of vapor barriers and/or vapor remedial systems onsite in an EIR.<sup>65</sup>

### **1. The MND Fails to Mitigate Hazardous Materials Risks to Less than Significant Levels.**

The MND contains no mitigation measures that address the potential presence of hazardous materials on the Project site which may expose construction

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<sup>62</sup> Clark Comments, p. 4.

<sup>63</sup> *Id.*

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

<sup>65</sup> *Id.* at 5.

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workers and the community to hazardous materials. Dr. Clark recommends the installation of vapor barriers and/or vapor remedial systems onsite. Until an adequate investigation is conducted, and any issues addressed and mitigated, the City cannot conclude that the Project would have a less than significant impact from hazards on the Project site.

Further, Dr. Clark explains that the recommendations provided in the Geotechnical Report are not sufficient to reduce the impact of soil erosion and loss of topsoil to less than significant levels.<sup>66</sup> The Geotechnical Report's recommendations are not binding mitigation under CEQA. CEQA requires mitigation measures "must be fully enforceable through permit conditions, agreements, or other legally binding instruments."<sup>67</sup> An EIR must be prepared that provides enforceable mitigation to address potentially significant impacts from hazards.

#### **E. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Greenhouse Gas Impacts**

The City's analysis of the Project's GHG emissions is inadequate. The MND concludes, contrary to substantial evidence, that the Project would have a less than significant impact related to "[g]enerat[ing] greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment" and "[c]onflict[ing] with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases."<sup>68</sup>

Substantial evidence supports a fair argument that the Project may result in generating GHG emissions in exceedance of allowable thresholds, and that the Project contravenes applicable policies and plans aimed at reducing GHGs emissions. "L.A.'s Green New Deal Pathway calls for the steepest near-term reductions in GHG emissions from building energy use than any other sector and cuts 50% of emissions by 2025 and 100% by 2050."<sup>69</sup> L.A.'s Green New Deal provides for the reduction of municipal GHG emissions 55% by 2025 and 65% by 2035 from 2008 baseline levels, allowing the City to reach carbon neutrality by 2045.<sup>70</sup> The

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<sup>66</sup> MND, p. 118.

<sup>67</sup> 14 C.C.R § 15126.4.

<sup>68</sup> MND, p. 121.

<sup>69</sup> L.A.'s Green New Deal, Sustainable City pLAn (2019)

[https://plan.lamayor.org/sites/default/files/pLAn\\_2019\\_final.pdf](https://plan.lamayor.org/sites/default/files/pLAn_2019_final.pdf)

<sup>70</sup> *Id.* at p. 11.

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Project does not comport with this trajectory, in fact, the Project directly contravenes this goal, resulting in potentially significant, unmitigated GHG impacts.

The City must prepare an EIR to adequately analyze and mitigate potentially significant GHG impacts. The EIR should include mitigation measures to reduce the Project's GHG and air quality impacts to a less than significant level. CREED's experts recommend numerous measures, including:

- Require implementation of Tier 4 diesel control measures for off-road construction equipment and generators powered by diesel engines;
- Repower or replace older construction equipment engines;
- Install retrofit devices on existing construction equipment;
- Use electric and hybrid construction equipment;
- Institute a heavy-duty off-road vehicle plan;
- Reduce vehicle miles traveled by increasing transit accessibility;
- Provide electric vehicle charging stations/parking;
- Implement an employee parking "cash-out" program;
- Implement transit access improvements; and
- Expand the transit network.

The City should implement these mitigation measures in an EIR to adequately mitigate all potentially significant GHG and air quality impacts from Project construction and operation.

**F. The MND Lacks Substantial Evidence to Support Its Conclusion that the Project Would Result in Less Than Significant Transportation Impacts**

The City concludes that the MND need not analyze the potentially significant impact from traffic because the VMT Calculator Tool found an initially significant

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VMT per employee, but with mitigation consisting of charging for parking, providing bike parking, and including ride-share matching and other transportation demand management strategies, the VMT is brought below the significance threshold. But, “[a] Project that is below the County’s thresholds based on VMT per capita (residential projects), VMT per employee (office projects), or VMT per service population (other land uses) and does not have a VMT impact compared to baseline conditions would also not have a cumulative impact as long as it is aligned with long-term environmental goals and relevant plans.”<sup>71</sup> Here, the Project is not aligned with long-term environmental goals of the City of Los Angeles, the County of Los Angeles, or the State of California, and the Project is not aligned with all relevant plans.

For example, “L.A.’s Green New Deal pathway calls for deep reductions in GHG emissions from the transportation sector, and cuts 25% of emissions by 2025 and 100% of on-road emissions by 2050. Reductions in transportation emissions are accounted for through the electrification targets in this chapter as well as through mode shift targets in the Mobility and Public Transit chapter.” The Project’s traffic impacts contravene the goals laid out in the L.A.’s Green New Deal and therefore constitute a significant impact under CEQA.

The MND’s VMT calculations are not supported by substantial evidence. The MND relies on VMT calculations that are not fully available for public scrutiny and review. This informational deficiency disallows public scrutiny of the VMT calculation to determine the significance of traffic impacts associated with the Project. The City must draft an EIR to adequately analyze and mitigate potentially significant impacts associated with traffic.

#### **IV. THE CITY LACKS SUBSTANTIAL EVIDENCE TO APPROVE THE PROJECT’S LAND USE PERMITS**

The Project requires a number of discretionary entitlements and related approvals under local City plans and codes, including a General Plan Amendment to modify the Central City North Community Plan to include the boundaries and development standards of the Project, pursuant to the City of Los Angeles Municipal Code (“LAMC”) § 11.5.6; a Height District change from the existing Height District 1 to Height District 2, pursuant to LAMC § 12.32F; a Master

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<sup>71</sup> Los Angeles County, Los Angeles County Senate Bill (SB) 743 Implementation and CEQA Updates Report (June 2020) <https://www.ladpw.org/traffic/docs/Implementation-Report.pdf>.  
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Conditional Use Permit to permit the sale of full line alcoholic beverages within four restaurants and bars, pursuant to LAMC § 12.21 W.1; Site Plan Review for a project that results in an increase of 50,000 gross square feet or more of nonresidential uses, pursuant to LAMC § 16.05; and a Vesting Tentative Tract Map pursuant to LAMC § 17.03 and 17.15.<sup>72</sup>

Each permit requires the City to make findings regarding land use consistencies and/or environmental factors. As discussed herein, there is substantial evidence supporting a fair argument that the Project has potentially significant, unmitigated impacts on air quality, GHG, hazards, and noise, that the MND fails to accurately disclose and fails to mitigate to less than significant levels. These unmitigated impacts create inconsistencies with several of the permits required for the Project.

Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy constitutes a significant land use impact and, in itself, indicates a potentially significant impact on the environment.<sup>73</sup> Any inconsistencies between a proposed project and applicable plans must be discussed in an EIR.<sup>74</sup> A project's inconsistencies with local plans and policies also constitute significant impacts under CEQA.<sup>75</sup> The City must circulate an EIR to adequately disclose and mitigate the significant land use impacts discussed below.

### **A. General Plan Amendment and Height District Change**

The Project Applicant is seeking a General Plan Amendment to modify footnotes 1 and 6 of the Central City North Community Plan.<sup>76</sup> Footnote 1 of the Central City North Community Plan limits the Project Site to Height District No. 1. Footnote 6 states that development exceeding an FAR of 1.5:1 up to 3:1 on properties designated as Height District No.1 may be permitted through a Zone Change Height District Change procedure, including environmental clearance. The

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<sup>72</sup> MND, p. 50.

<sup>73</sup> See, *Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.

<sup>74</sup> 14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).

<sup>75</sup> *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177; see also, *County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376.

<sup>76</sup> MND, p. 30.

requested Zone Change Height District Change would modify both footnotes to include the proposed boundaries and development standards of the Project.

With approval of the Height District Change, the allowable FAR would increase from 1.5:1 to 4.5:1, resulting in a development potential of up to 310,018 square feet on the Project Site. The Project would create approximately 188,954 new square feet of developed floor area. Combined with the 107,224 square feet of existing floor area from the 640 S. Santa Fe Avenue building, the total proposed floor area across the Project Site would be 296,178 square feet, resulting in a total FAR of 4.3:1.

The General Plan Amendment would result in a permanent change that impacts the entire Community Plan Area, and is not limited to the Project site. The General Plan Amendment would result in a higher FAR allowed in the Central City North Community Plan with a Height District Change than is currently allowed under Footnotes 1 and 6. Higher floor area ratios result in denser construction. The MND lacks analysis of the impacts that the General Plan Amendment would have from increased development density and associated environmental and public health impacts that would result in the Central City North Community Plan Area from authorizing a higher FAR.

The MND also lacks substantial evidence to demonstrate that the Project satisfies the mandatory requirements for approving a General Plan Amendment. Under Section 556 of the City Charter, in order to amend the General Plan, the “City Planning Commission and the Council shall make findings showing that the action is in substantial conformance with the purposes, intent and provisions of the General Plan.”<sup>77</sup> “Once a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be ‘in harmony’ with the policies stated in the plan.”<sup>78</sup> It is the role of the City to determine the Project’s consistency with the General Plan, not to make the General Plan consistent with the Project.

Here, the proposed Project violates the existing General Plan, thus necessitating a General Plan Amendment to allow the Project to proceed. The MND lacks a detailed analysis of the impacts associated with the increased density that would be authorized by the Project’s increased FAR, and lacks an analysis of the

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<sup>77</sup> City of Los Angeles Charter § 556.

<sup>78</sup> *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 638. L5691-004acp

impacts associated with the incremental increases in density that could subsequently be authorized under subsequent Height District Changes in the Central City North Community Plan once Footnotes 1 and 6 are amended to authorize FAR of up to 4.5:1. Impacts associated with increased residential and commercial density that should have been analyzed in the Project's CEQA document include increased air quality impacts, noise, transportation impacts, and impacts on public services, to name a few. An EIR is required to analyze and mitigate the full extent of the Project's impacts from the proposed General Plan Amendment.

Finally, the MND fails to include evidence that would support the approval of a General Plan amendment pursuant to LAMC Section 11.5.6(B). Pursuant to this section, the LAMC would not restrict adoption of a General Plan Amendment which provides for an exclusively local work force at prevailing wage, and provides affordable housing.<sup>79</sup> Since the MND lacks evidence demonstrating that these factors will be met, the General Plan amendment is not clearly eligible for approval under the LAMC.

The City failed to adequately analyze and mitigate the impacts associated with nonconformance with the existing General Plan and the City failed to analyze potentially significant impacts associated with this General Plan Amendment, in violation of CEQA. The City must prepare an EIR to adequately analyze and mitigate all impacts associated with the General Plan Amendment and Height District Change.

## **B. Master Conditional Use Permit Approval for the Sale of Alcohol**

The Project must secure approval pursuant to LAMC Section 12.24-W,1 for the sale and dispensing 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.<sup>80</sup> Section 12.24-W,1, however, requires that the Zoning Administrator shall find, among other things, that that the proposed use "will not adversely affect the welfare of the pertinent community."<sup>81</sup>

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<sup>79</sup> LAMC § 11.5.6(B)(2), (3).

<sup>80</sup> MND, p. 50.

<sup>81</sup> LAMC Section 12.24.W.1(a)(1).

The potential impacts from noise on neighboring residences from establishments serving alcohol can be significant. Noise from boisterous patrons and music being played on the Project Site will likely have an impact on the residences at the AMP Lofts and other sensitive receptors, and could impact homes' interiors since windows have poor low-frequency attenuation. The resulting noise from these activities may require mitigation to reduce adverse impacts to neighboring residents.

The MND fails to disclose whether the Project anticipates the use of sound systems, alcohol on balconies on the upper floors and in the paseo courtyard, and other sources of significant noise impacts, and fails to analyze whether the establishments serving alcohol will adversely affect the welfare of the pertinent community. The MND thus does not provide the substantial evidence to support the required findings that must be made for approval of a Master Conditional Use Permit for the sale and dispensing of alcohol to be consumed at the site. The City must prepare an EIR which adequately analyzes and mitigates impacts associated with alcohol sales on the Project site.

### C. Vesting Tentative Tract Map

Pursuant to LAMC Sections 17.03 and 17.15, the City requires a Vesting Tentative Tract Map. But, neither the MND nor the appendices provide the Vesting Tentative Tract Map for public review. CEQA requires a lead agency to provide sufficient information to foster informed decision making and public participation. The court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* determined that “[t]he data in the EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project.”<sup>82</sup> Further, “information scattered here and there in EIR appendices or a report buried in an appendix, is not a substitute for a good faith reasoned analysis.”<sup>83</sup> The requirement of a detailed analysis ensures that stubborn problems or serious criticism are not “swept under the rug.”<sup>84</sup>

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<sup>82</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.

<sup>83</sup> *Id.*, quoting *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239, quoting *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 723.

<sup>84</sup> *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357.  
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A Vesting Tentative Map should have been provided for public scrutiny in this case. A Vesting Tentative Map would have elucidated the real-world impacts of the Project. Further, LAMC Section 17.15(B)(1)(a) requires that “[i]f it is known at the time of filing that an additional approval... is necessary, the application for such additional approval shall be filed prior to or simultaneously with the vesting tentative map.”<sup>85</sup> The Vesting Tentative Map was not made available for public review along with the MND. This violation of the LAMC constitutes a significant impact under CEQA, and an informational deficiency under CEQA. An EIR should be prepared to correct these deficiencies.

## V. CONCLUSION

There is substantial evidence supporting a fair argument that the Project may result in potentially significant adverse impacts that were not identified in the MND, and thus have not been adequately analyzed or mitigated. The City also lacks substantial evidence to support many of the MND’s significance conclusions, in violation of CEQA.

We urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing a legally adequate EIR to address the potentially significant impacts described in this comment letter and the attached letter from James Clark Ph.D. This is the only way the City and the public will be able to ensure that the Project’s significant environmental impacts are mitigated to less than significant levels.

Thank you for your consideration of these comments.

Sincerely,



Kelilah D. Federman

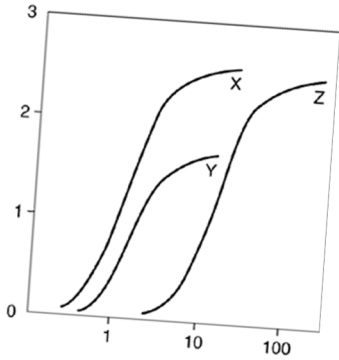
Attachment

KDF:acp

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<sup>85</sup> LAMC § 17.15(B)(1)(a).  
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# **EXHIBIT A**



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Environmental Consulting, Inc.

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October 13, 2021

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

**Attn: Ms. Kelilah D. Federman**

**Subject: DRAFT Comments On 655 Mesquit Street Project Case  
Number: ENV-2020-6829-EAF CPC-2020-6828-GPA-  
ZC-HD-SPR-MCUP**

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Dear Ms. Federman:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the 2021 City of Los Angeles Initial Study/Mitigated Negative Declaration (IS/MND) 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 involves the redevelopment of a surface parking lot on the existing 640 S. Santa Fe Avenue site (“Project Site”) into a 14-story commercial building with approximately 188,954 square feet of floor area comprised of 184,629 square feet of office uses and approximately 4,325 square feet of ground floor commercial uses (“Project”). The proposed development activities would be limited to the eastern portion of the Project Site fronting Mesquit Street (referred to as the “Development Site”). The Project Site occupies approximately 68,893 square feet of lot area (1.58 acres) after dedications and is located on the northern side of Jesse Street, between Mesquit Street and Santa Fe Avenue in the Arts District in the City

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of Los Angeles (“City”). The western half of the Project Site that fronts Santa Fe Avenue is developed with the recently constructed 640 S. Santa Fe Avenue building, which is a four-story, 107,224 square-foot office and ground floor commercial building with two levels of subterranean parking. The Development Site is currently developed as a surface parking lot to serve the 640 S. Santa Fe Avenue building.

The Project would include two levels of subterranean parking and five levels of above grade parking on a portion of the Project Site that is currently improved with a surface parking lot. The height of the new structure would be 195 feet above grade. Vehicular access to the parking would be provided by a two-way driveway shared with the 640 S. Santa Fe Avenue building, running along the northern property line from Santa Fe Avenue through to Mesquit Street. From the driveway, on the interior of the Project Site, access to the two subterranean parking levels would be provided by a ramp shared with the 640 S. Santa Fe Avenue building, and access to the five levels of above grade parking would be provided via an interior ramp within the Project building footprint. The top level of the above-grade parking level is proposed to function as a flexible community space when not in use for parking. In total, the Project would provide 397 vehicle parking spaces, 343 of which satisfy code required parking for the Project and 54 of which would serve the 640 S. Santa Fe Avenue Project as replacements for the parking displaced from the existing surface parking lot. Loading space and some handicap accessible parking spaces would be provided at grade. The Project’s proposed floor area of 188,954 square feet combined with the 107,224 square feet of floor area from the 640 S. Santa Fe Avenue building would create a total proposed floor area of 296,178 square feet for the entire Project Site, resulting in a Floor Area Ratio of 4.3:1.

The Project Site is identified as Assessor Parcel Number (APN No. 5164-015-022) and encompasses 68,893 square feet of lot area (1.58 acres) after right-of-way dedications. The Project Site is generally bounded by the Los Angeles Department of Water and Power (LADWP) River Switching Station to the north (“LADWP substation”), Mesquit Street to the east, Jesse Street to the south, and Santa Fe Avenue to the west. The western half of the Project Site is occupied by the 640 S. Santa Fe Avenue building, a four-story office and ground floor commercial building with two levels of subterranean parking that fronts Santa Fe Avenue. The proposed Development Site, which is located on the eastern portion of the Project Site fronting Mesquit Street, is currently developed as a surface parking lot to serve the 640 S. Santa Fe Avenue building. The properties surrounding the Project Site



are developed with offices, industrial uses, warehousing and storage, and to the east are the Burlington Northern Santa Fe Railway trackage, and the Los Angeles River.

Existing Conditions - The western half of the Project Site is improved with the 640 S. Santa Fe Avenue building, a four-story, 107,224 square foot, office with ground floor commercial uses with two levels of subterranean parking. The proposed Development Site, which occupies the eastern half of the Project Site, is currently a surface parking lot for the 640 S. Santa Fe Avenue building. The 640 S. Santa Fe Avenue Project, in accordance with the approved landscape palate for DIR-2016-3858-SPR, includes approximately 20 trees within the planters in the surface parking lot on the Development Site.

According to the City's IS/MND, the Project would result in significant and unavoidable impacts related to on transportation and tribal resources. All other impacts were determined to be less than significant with mitigation. The assessment the City provided in the IS/MND misses the significant impacts associated with air quality that have been ignored by the City. The conclusion from the City that all other potential impacts would be less than significant is, in fact, without merit. There are substantial impacts that are not addressed in the City's analysis that must be addressed in an environmental impact report (EIR).

### **Specific Comments:**

#### **1. The City Relies On A Phase I Environmental Site Assessment (ESA) That Is Out Of Date, Unsigned And A Draft Report.**

In Section IX of the IS/MND, the City determined that the Project would not create a significant hazard to the public or the environment. Part of the basis of the determination is the Phase I Environmental Site Assessment report prepared by Ninyo and Moore. A review of the report in Appendix E of the IS/MND reveals that the report is stamped DRAFT on every page, is unsigned by the professional who prepared the report, and is more than 5 years old (dated March 18, 2016). Submittal of a draft report without signatures clearly does not comport with the guidance from ASTM or the State of California regarding environmental site assessments, and ASTM standards state that Phase I Environmental Site Assessments are presumed to be valid for just 180 days. The conclusions of the report would not be supportable in any manner given these conditions. The City must correct

this error by preparing and circulating a new Environmental Site Assessment in an environmental impact report for the Project.

**2. The City’s Determination That There Is Not A Hazard On Site Is Not Supported By The Existing Data And It Is Clear That There Is A Potential Health Risk From Vapor Intrusion That Exceeds The Significance Thresholds Of 10 In One Million Or A Hazard Index In Excess Of 1.**

In Appendix E to City’s IS/MND is included a Phase II subsurface investigation by EFI Global. The purpose of the Phase II was to whether the former on-site operations and features had significantly impacted the subsurface of the Site. Seventeen borings were advanced to a maximum depth of 15 ft below ground surface. Soil vapor probes were only sampled at depths of 5 ft bgs. EFI found that tetrachloroethylene (PCE), trichloroethylene (TCE), 1,1,1-trichloroethane (1,1,1-TCA), and trichlorotrifluormethane (FC-11) were detected across the site. EFI compared the sampling results to the California Human Health Screening Levels (CHHSLs) and used the Johnson-Ettinger (J/E) Vapor Intrusion Model to quantify the potential vapor intrusion risk at the Site. Based on the J/E Vapor Intrusion Model, EFI Global opined that the detected soil vapor levels did not represent an unacceptable risk to human health to the existing structure or future Site structures assuming continued commercial use of the Site.<sup>1</sup>

Since the preparation of the Phase II report, the State of California’s Department of Toxic Substances Control (DTSC) has abandoned the use of the J/E Vapor Intrusion Model in favor of an attenuation factor model. According to the DTSC<sup>2</sup>, the “Supplemental Guidance recommends the use of USEPA empirically-derived attenuation factors (AFs) (USEPA, 2015a) for the screening of sites in California. These AFs are protective of public health under most building occupancy scenarios and should be used for the initial screening of sites. Site-specific AFs derived from mathematical models, such as the Johnson and Ettinger model, are not recommended for the initial screening of occupied

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<sup>1</sup> EFI Global. 2016. Phase II Environmental Site Assessment Report Performed at 640 South Santa Fe Avenue, Los Angeles, CA. Pg 10 of 14.

<sup>2</sup> DTSC. 2020. Supplemental Guidance: Screening and Evaluating Vapor Intrusion. [https://dtsc.ca.gov/wp-content/uploads/sites/31/2020/02/Public-Draft-Supplemental-VI-Guidance\\_2020-02-14.pdf](https://dtsc.ca.gov/wp-content/uploads/sites/31/2020/02/Public-Draft-Supplemental-VI-Guidance_2020-02-14.pdf)

buildings.” The recommended attenuation factor for subslab soil gas and soil gas was calculated to be 0.03.

Using the AF of 0.03 and the soil vapor results measured on site during the 2016 Phase II Investigation, it is possible to calculate the indoor air concentrations of vapors migrating into buildings on the Project site. For the chemicals of concern (COCs) measured onsite, the maximum risk from soil vapor intrusion exceeds the significance threshold for carcinogenic chemicals of 10 in 1,000,000 for commercial workers on site.

**Estimated Potential Cancer Risk for Inhalation of VOCs In Indoor Air  
Commerical Worker Inhalation Risk - 5 Ft Using 0.03 AF  
640 South Santa Fe Avenue  
Los Angeles, CA**

CHEMICAL	Soil Gas Concentration ( $\mu\text{g}/\text{m}^3$ )	Indoor Air VOC Concentration ( $\mu\text{g}/\text{m}^3$ )	IUR ( $\mu\text{g}/\text{m}^3$ )-1	Estimated Potential Cancer Risk
Chlorinated VOC COPCs				
1,1,1-Trichloroethane	4.95E+01	1.485	N/A	0.0E+00
PCE	1.23E+03	36.9	2.60E-07	1.4E-06
TCE	5.76E+02	17.28	4.10E-06	1.20E-05
Halogenated Refrigerant COPCs				
Trichlorofluoromethane	2.87E+01	0.861	N/A	0.0E+00
Vapor Inhalation Risk				1.3E-05

For the COCs measured onsite, the maximum hazard index from soil vapor intrusion exceeds the significance threshold of 1 for commercial workers on site.

**Estimated Potential Noncancer Hazard Index for Inhalation of VOCs in Soil Gas  
Commerical Worker Exposure Scenario Hazard Index - 5 Ft Using 0.03 AF  
640 South Santa Fe Avenue  
Los Angeles, CA**

CHEMICAL	Soil Gas VOC Concentration ( $\mu\text{g}/\text{m}^3$ )	Indoor Air VOC Concentration ( $\mu\text{g}/\text{m}^3$ )	Inhalation RfC ( $\text{mg}/\text{m}^3$ )	Estimated Potential Hazard Quotient
Chlorinated VOC COPCs				
1,1,1-Trichloroethane	4.95E+01	1.485	5.00E+00	6.8E-05

PCE	1.23E+03	36.9	4.00E-02	2.1E-01
TCE	5.76E+02	17.28	2.00E-03	2.0E+00
Halogenated Refrigerant COPCs				
Trichlorofluoromethane	2.87E+01	0.861	N/A	
Vapor Inhalation HI				2.2E+00

The City must correct these errors and address these significant hazardous waste issues on site by implementing a remedial strategy to remove the residual soil vapor, mitigating the risk by requiring the installation of vapor barriers and/or vapor remedial systems onsite in an EIR.

**3. The City’s Air Quality Analysis Regarding Toxic Air Contaminant (TAC) Emissions From The Operational Phase Of The Project Is Seriously Flawed.**

The City’s air quality analysis of TACs emissions is seriously flawed and ignores known source(s) on site. According to the IS/MND, “the only potential source of toxic air contaminants generated by the Project would be diesel particulate matter (DPM), which would be generated by motor vehicles traveling to and from the Project Site. Operation of the Project would generate a relatively small amount of ongoing operational DPM emissions from a minimal number of diesel-fueled vehicles (e.g., delivery trucks), as compared to an industrial oil refinery facility that has numerous heavy-duty industrial-sized equipment and industrial processes.” The City’s comparison of the impacts of the diesel-fueled vehicles and industrial oil refinery facility is non-sensical and immaterial to whether the Project is a source of TACs and whether the emissions from the Project would have an impact on the community or the environment. The City must remove this ill-conceived comparison from its analysis.

A closer look at the CalEEMOD analysis of the Project shows that the City was aware that another source, the emergency backup generator for the Project was also included in the model. The analysis performed by the City assumes that the 1000 horse power back-up generator (BUG) would only be operated 12 hours a year for testing.

## 10.0 Stationary Equipment

### Fire Pumps and Emergency Generators

Equipment Type	Number	Hours/Day	Hours/Year	Horse Power	Load Factor	Fuel Type
Emergency Generator	1	0.5	12	1000	0.73	Diesel

### 10.1 Stationary Sources

#### Unmitigated/Mitigated

	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
Equipment Type	lb/day										lb/day					
Emergency Generator - Diesel (750 - 9999 HP)	0.8204	3.6694	2.0922	3.9400e-003		0.1207	0.1207		0.1207	0.1207		419.7571	419.7571	0.0589		421.2283
<b>Total</b>	<b>0.8204</b>	<b>3.6694</b>	<b>2.0922</b>	<b>3.9400e-003</b>		<b>0.1207</b>	<b>0.1207</b>		<b>0.1207</b>	<b>0.1207</b>		<b>419.7571</b>	<b>419.7571</b>	<b>0.0589</b>		<b>421.2283</b>

It is clear from the City's analysis that the BUG is the most significant source of diesel emissions from the project site.

## 2.2 Overall Operational

### Mitigated Operational

	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					
Area	4.2950	5.4000e-004	0.0598	0.0000		2.1000e-004	2.1000e-004		2.1000e-004	2.1000e-004		0.1285	0.1285	3.3000e-004		0.1368
Energy	0.0821	0.7460	0.6267	4.4800e-003		0.0567	0.0567		0.0567	0.0567		895.2503	895.2503	0.0172	0.0164	900.5703
<b>Mobile</b>	<b>2.7298</b>	<b>12.3966</b>	<b>32.7872</b>	<b>0.1357</b>	<b>12.0099</b>	<b>0.0943</b>	<b>12.1042</b>	<b>3.2128</b>	<b>0.0876</b>	<b>3.3003</b>		<b>13,853.3191</b>	<b>13,853.3191</b>	<b>0.5940</b>		<b>13,868.1680</b>
<b>Stationary</b>	<b>0.8204</b>	<b>3.6694</b>	<b>2.0922</b>	<b>3.9400e-003</b>		<b>0.1207</b>	<b>0.1207</b>		<b>0.1207</b>	<b>0.1207</b>		<b>419.7571</b>	<b>419.7571</b>	<b>0.0589</b>		<b>421.2283</b>
<b>Total</b>	<b>7.9273</b>	<b>16.8126</b>	<b>35.5658</b>	<b>0.1441</b>	<b>12.0099</b>	<b>0.2719</b>	<b>12.2818</b>	<b>3.2128</b>	<b>0.2682</b>	<b>3.4779</b>		<b>15,168.4548</b>	<b>15,168.4548</b>	<b>0.6703</b>	<b>0.0164</b>	<b>15,190.1034</b>

The City must address this significant source of diesel emissions on site and assess what the impacts will be on the community in an EIR.

#### **4. The City's CalEEMOD Analysis Of Emissions From The Back Up Generator (BUG) On-Site Must Include The Testing And Non-Testing (Operational) Impacts Of The BUG**

According to SCAQMD Rules 1110.2, 1470, back-up generators (BUGs) are allowed to operate for up to 200 hours per year and maintenance cannot exceed more than 50 hours per year. The assumption by the City that maintenance and testing of the BUG would not exceed 12 hours per year is unsupported. The City must revise its air quality analysis to include the use of BUGs onsite in an EIR.

In addition to the testing emissions the air quality analysis must include the substantial increase in operational emissions from BUGs in the Air Basin due to unscheduled events, including but not limited to Public Safety Power Shutoff (PSPS) events and extreme heat events. Extreme heat events are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.<sup>3</sup> From January, 2019 through December, 2019, Southern California Edison reported 158 of their circuits underwent a PSP event<sup>4</sup>. In Los Angeles County two circuits had 4 PSPS events during that period lasting an average of 35 to 38 hours. The total duration of the PSPS events lasted between 141 hours to 154 hours in 2019. In 2021, the Governor Of California declared that during extreme heat events the use of stationary generators shall be deemed an emergency use under California Code of Regulations (CCR), title 17, section 93115.4 sub. (a) (30) (A)(2). The number of Extreme Heat Events is likely to increase in California with the continuing change in climate the State is currently undergoing.

Power produced during PSPS or extreme heat events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts).<sup>5</sup> Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon

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<sup>3</sup> Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021.

<sup>4</sup> SCAQMD. 2020. Proposed Amendment To Rules (PARS) 1110.2, 1470, and 1472. Dated December 10, 2020. [http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2\\_1470\\_1472/par1110-2\\_1470\\_wgm\\_121020.pdf?sfvrsn=6](http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2_1470_1472/par1110-2_1470_wgm_121020.pdf?sfvrsn=6).

<sup>5</sup> CARB. 2019. Use of Back-up Engines For Electricity Generation During Public Safety Power Shutoff Events. October 25, 2019.

particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury.

According to the California Public Utilities Commission (CPUC) de-energization report<sup>6</sup> in October 2019, there were almost **806 PSPS events** (emphasis added) that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers, and the rest were commercial/industrial/medical baseline/other customers. CARB's data also indicated that on average each of these customers had about 43 hours of power outage in October 2019.<sup>7</sup> Using the actual emission factors for each diesel BUG engines in the air district's stationary BUGs database, CARB staff calculated that the 1,810 additional stationary generators (like those proposed for the Project) running during a PSPS in October 2019 generated 126 tons of NOx, 8.3 tons of particulate matter, and 8.3 tons of DPM.

For every PSPS or Extreme Heat Event (EHE) triggered during the operational phase of the project, significant concentrations of DPM will be released that are not accounted for in the City's analysis. In 2021, two EHEs have been declared so far. For the June 17, 2021 Extreme Heat Event, the period for which stationary generator owners were allowed to use their BUGs lasted 48 hours. For the July 9, 2021 EHE, the period for which stationary generator owners were allowed to use their BUGs lasted 72 hours. These two events would have tripled the calculated DPM emissions from the Project if only the 50 hours of testing that is allowed were quantified for the Project's operational emissions. An EIR must be written for the Project that includes an analysis of the additional operation of the BUG that will occur at the project site that is not accounted for in the current air quality analysis.

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<sup>6</sup> <https://www.cpuc.ca.gov/deenergization/> as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage..

<sup>7</sup> CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage..

## 5. The City’s Air Quality Analysis Fails To Include A Quantitative Health Risk Analysis Of The Impacts Of Toxic Air Contaminants From The Construction Phase And The Operational Phase Of The Project For The Nearest Sensitive Receptor(s)

The City failed to conduct a numerical health risk analysis (HRA) for Project. According to the IS/MND a “significant impact may occur if a project were to generate pollutant concentrations to a degree that would significantly affect sensitive receptors.... Air quality-sensitive land uses that are located at greater distances from the Project Site would experience lower air pollutant impacts from potential sources of pollutants generated by the Project due to atmospheric dispersion effects. Based on a review of the vicinity of the Project Site, the following sensitive receptors were identified:

- 1) AMP Lofts, 695 S. Santa Fe Avenue (multi-family residential)
- 2) Artists’ Lofts, 2101 7th Street (multi-family residential)
- 3) Brick Lofts, 652 Mateo Street (multi-family residential)”<sup>8</sup>

The IS/MND goes on to state that, for the purposes of assessing pollution concentrations upon sensitive receptors, the SCAQMD has developed LSTs that are based on the number of pounds of emissions per day that can be generated by a project that would cause or contribute to adverse localized air quality impacts.<sup>9</sup> For the Criteria Pollutants assessed under CEQA, this is correct. For TACs, there are no LSTs, not levels of significance based on the pounds per day, and the determination of a significance threshold is based on a *quantitative risk analysis* that requires the City to perform a multistep, quantitative health risk analysis.

Under the TAC section of the air quality analysis the City<sup>10</sup> goes on to state that the “Project’s construction activities would generate toxic air contaminants (“TACs”) in the form of diesel particulate matter (“DPM”) emissions associated with the use of heavy trucks and construction

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<sup>8</sup> City of Los Angeles. 2021. Initial Study/Mitigated Negative Declaration For 655 Mesquit Street Project. Case Number ENV-2020-6829-EAF, CPC-2020-6828-GPA-ZC-HD-SPR-MCUP. Pg 81.

<sup>9</sup> *ibid.*

<sup>10</sup> City of Los Angeles. 2021. Initial Study/Mitigated Negative Declaration For 655 Mesquit Street Project. Case Number ENV-2020-6829-EAF, CPC-2020-6828-GPA-ZC-HD-SPR-MCUP. Pg 84.



equipment during construction...“Individual Cancer Risk” is the likelihood that a person continuously exposed to concentrations of TACs over a 70-year lifetime will contract cancer based on the use of standard risk assessment methodology. Given the short-term construction schedule of approximately 24 months, the Project would not result in a long-term (i.e., 70-year) source of TAC emissions. No residual emissions and corresponding individual cancer risk are anticipated after construction. Because there is such a short-term exposure period (24 out of 840 months of a 70-year lifetime), health risks associated with DPM emissions during construction would be less than significant.”

TACs, including DPM, contribute to a host of respiratory impacts and may lead to the development of various cancers. Failing to quantify those impacts places the community at risk for unwanted adverse health impacts. *Even brief exposures to the TACs could lead to the development of adverse health impacts over the life of an individual.*

Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. TACs are airborne substances that are capable of causing short-term (acute) and/or long-term (chronic or carcinogenic, i.e., cancer causing) adverse human health effects (i.e., injury or illness). TACs include both organic and inorganic chemical substances. The current California list of TACs includes approximately 200 compounds, including particulate emissions from diesel-fueled engines.

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.<sup>11,12,13</sup> Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.<sup>14</sup> Exposure to DPM increases the risk

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<sup>11</sup> California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB%20identified%20DPM,and%20other%20adverse%20health%20effects.>

<sup>12</sup> U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

<sup>13</sup> Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; [http://www.edf.org/documents/4941\\_cleanerdieselhandbook.pdf](http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf), accessed July 5, 2020.

<sup>14</sup> California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls, immunological allergic reactions, and airway constriction.<sup>15</sup> DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM<sub>2.5</sub> and PM<sub>10</sub>.<sup>16</sup>

The analysis performed by the City fails to meet even the basic requirements of a health risk analysis and clearly misstates the issues regarding health risk analysis. Firstly, the City is intentionally misstating how the individual risk is calculated for any given exposure. A review of all the relevant guidance from regulatory agencies involved in health risk analysis confirms that nowhere is an individual cancer risk calculated assuming a 70-year exposure. The relevant major federal and state guidance documents and/or information sources that can be cited about the preparation of a health risk analysis and the input variables include:

- Human Health Risk Assessment Note Number 1: Recommended DTSC Default Exposure Factors for Use in Risk Assessment at California Hazardous Waste Sites and Permitted Facilities. 2019. (DTSC / Human and Ecological Risk Office [HERO], April 2019);
- Human Health Risk Assessment Note Number 3: DTSC-modified Screening Levels (DTSC-SLs). 2020. (DTSC/HERO, June 2020);
- Preliminary Endangerment Assessment Guidance Manual. 2015. (California Environmental Protection Agency [Cal/EPA] DTSC, original 1994, second printing 1999, third printing 2015);
- Supplemental Guidance for Human Health Multimedia Risk Assessments of Hazardous Waste Sites and Permitted Facilities. DTSC, Office of Scientific Affairs. 1996. (Cal/EPA DTSC, original 1992, corrected and reprinted 1996);
- Risk Assessment Guidance for Superfund (RAGS) Volume I: Human Health Evaluation Manual (Part A) (U.S. EPA 1989a);
- RAGS Volume I: Human Health Evaluation Manual (Part B, Development of Risk-based Preliminary Remediation Goals) (U.S. EPA 1991);
- RAGS Volume I: Human Health Evaluation Manual (Part C, Risk Evaluation of Remedial Alternatives) (U.S. EPA 1991);
- RAGS Volume I: Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments) (U.S. EPA 2001);

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<sup>15</sup> Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.

<sup>16</sup> Health & Safety Code § 39655(a) (defining "toxic air contaminant" as air pollutants "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. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant.")

- RAGS, Volume I: Human Health Evaluation Manual (Part E, Supplemental Guidance for Dermal Risk Assessment) (U.S. EPA 2004);
- RAGS, Volume I: Human Health Evaluation Manual (Part F, Supplemental Guidance for Inhalation Risk Assessment) (U.S. EPA 2009);
- Regional Screening Levels (RSLs) (U.S. EPA, 2020)
- Guidance for Data Useability [sic] in Risk Assessment (U.S. EPA 1992c);
- National Oil and Hazardous Substances Pollution Contingency Plan (U.S. EPA 1990b);
- Exposure Factors Handbook (U.S. EPA 2011);
- Child-Specific Exposure Factors Handbook (U.S. EPA 2008);
- Dermal Exposure Assessment, Principles and Applications (Interim Report) (U.S. EPA 1992a);
- Integrated Risk Information System (IRIS) database (U.S. EPA 2012);
- Soil Screening Guidance (U.S. EPA 1996a, b); and
- Superfund Exposure Assessment Manual (U.S. EPA 1988c).

Nowhere in those documents is there a reference to a 70-year exposure. The City's analysis is incorrect and entirely unsupported. The City must correct this significant error in the MND's air quality analysis. In addition they must perform the necessary quantitative health risk analysis as described in the documents cited above.

Secondly, while the potential exposure period for the closest sensitive receptor may be only 24 months, the inherent toxicity of the TACs requires the City to first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern. Following that analysis, then the City can make a determination of the relative significance of the emissions. The City's failure to perform such an analysis is clearly a major flaw in there IS/MND and may be placing the residents of the adjacent structures at risk from the construction and operational phases of the Project.

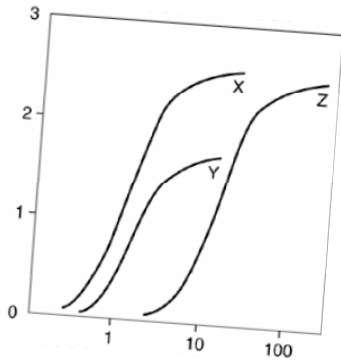
## Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the conditional exemption is approved. The City must re-evaluate the significant impacts identified in this letter by requiring the preparation of a draft environmental impact report.

Sincerely,



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***James J. J. Clark, Ph.D.***

*Principal Toxicologist*

**Toxicology/Exposure Assessment Modeling**

**Risk Assessment/Analysis/Dispersion Modeling**

**Education:**

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

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

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

**Professional Experience:**

Dr. Clark is a well recognized toxicologist, air modeler, and health scientist. He has 20 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

Significant projects performed by Dr. Clark include the following:

**LITIGATION SUPPORT**

**Case: James Harold Caygle, et al, v. Drummond Company, Inc. Circuit Court for the Tenth Judicial Circuit, Jefferson County, Alabama. Civil Action. CV-2009**

**Client: Environmental Litigation Group, Birmingham, Alabama**

Dr. Clark performed an air quality assessment of emissions from a coke factory located in Tarrant, Alabama. The assessment reviewed include a comprehensive review of air quality standards, measured concentrations of pollutants from factory, an inspection of the facility and detailed assessment of the impacts on the community. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Rose Roper V. Nissan North America, et al. Superior Court of the State Of California for the County Of Los Angeles – Central Civil West. Civil Action. NC041739**

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

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to multiple chemicals, including benzene, who later developed a respiratory distress. A review of the individual's medical and occupational history was performed to prepare an exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to respiratory irritants. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: O'Neil V. Sherwin Williams, et al. United States District Court Central District of California**

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

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to petroleum distillates who later developed a bladder cancer. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Summary judgment for defendants.**

**Case: Moore V., Shell Oil Company, et al. Superior Court of the State Of California for the County Of Los Angeles**

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

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to chemicals while benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Raymond Saltonstall V. Fuller O'Brien, KILZ, and Zinsser, et al. United States District Court Central District of California**

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

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Richard Boyer and Elizabeth Boyer, husband and wife, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-7G.**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: JoAnne R. Cook, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-9R**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of an individual exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Patrick Allen And Susan Allen, husband and wife, and Andrew Allen, a minor, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-W**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Michael Fahey, Susan Fahey V. Atlantic Richfield Company, et al. United States District Court Central District of California Civil Action Number CV-06 7109 JCL.**



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

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Constance Acevedo, et al., V. California Spray-Chemical Company, et al., Superior Court of the State Of California, County Of Santa Cruz. Case No. CV 146344**

Dr. Clark performed a comprehensive exposure assessment of community members exposed to toxic metals from a former lead arsenate manufacturing facility. The former manufacturing site had undergone a DTSC mandated removal action/remediation for the presence of the toxic metals at the site. Opinions were presented regarding the elevated levels of arsenic and lead (in attic dust and soils) found throughout the community and the potential for harm to the plaintiffs in question.

**Case Result: Settlement in favor of defendant.**

**Case: Michael Nawrocki V. The Coastal Corporation, Kurk Fuel Company, Pautler Oil Service, State of New York Supreme Court, County of Erie, Index Number I2001-11247**

**Client: Richard G. Berger Attorney At Law, Buffalo, New York**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the

known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Judgement in favor of defendant.**

## **SELECTED AIR MODELING RESEARCH/PROJECTS**

### **Client – Confidential**

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

### **Client – Confidential**

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

### **Client – Los Angeles Alliance for a New Economy (LAANE), Los Angeles, California**

Dr. Clark is advising the LAANE on air quality issues related to current flight operations at the Los Angeles International Airport (LAX) operated by the Los Angeles World Airport (LAWA) Authority. He is working with the LAANE and LAX staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

**Client – City of Santa Monica, Santa Monica, California**

Dr. Clark is advising the City of Santa Monica on air quality issues related to current flight operations at the facility. He is working with the City staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

**Client: Omnitrans, San Bernardino, California**

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

**Client: Confidential, San Francisco, California**

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

**Client: Confidential, Minneapolis, Minnesota**

Prepared human health risk assessment of workers exposed to VOCs from neighboring petroleum storage/transport facility. Reviewed the systems in place for distribution of petroleum hydrocarbons to identify chemicals of concern (COCs), prepared comprehensive toxicological summaries of COCs, and quantified potential risks from carcinogens and non-carcinogens to receptors at or adjacent to site. This evaluation was used in the support of litigation.

**Client – United Kingdom Environmental Agency**

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

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

## **EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS**

### **Client: Ameren Services, St. Louis, Missouri**

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

### **Client: City of Santa Clarita, Santa Clarita, California**

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

### **Client: Confidential, Los Angeles, California**

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

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

**Client – Confidential, Los Angeles, California**

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

**PUBLIC HEALTH/TOXICOLOGY**

**Client: Brayton Purcell, Novato, California**

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

**Client: Confidential, San Francisco, California**

Identified and analyzed fifty years of epidemiological literature on workplace exposures to heavy metals. This research resulted in a summary of the types of cancer and non-cancer diseases associated with occupational exposure to chromium as well as the mortality and morbidity rates.

**Client: Confidential, San Francisco, California**

Summarized major public health research in United States. Identified major public health research efforts within United States over last twenty years. Results were used as a briefing tool for non-public health professionals.

**Client: Confidential, San Francisco, California**

Quantified the potential multi-pathway dose received by humans from a pesticide applied indoors. Part of team that developed exposure model and evaluated exposure concentrations in a comprehensive report on the plausible range of doses received by a specific person. This evaluation was used in the support of litigation.

**Client: Covanta Energy, Westwood, California**

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

**Client – United Kingdom Environmental Agency**

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

**Client – Confidential, Los Angeles, California**

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

**Client – Confidential, Los Angeles, California**

Prepared comprehensive evaluation of methyl *tertiary* butyl ether (MTBE) in municipal drinking water system. MTBE is a chemical added to gasoline to increase the octane

rating and to meet Federally mandated emission criteria. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MTBE. The results of the evaluation have been used as a briefing tool for non-public health professionals.

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

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

**Client: Confidential, Los Angeles, California**

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

**Client: Kaiser Venture Incorporated, Fontana, California**

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

**RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS**

**Client: Confidential, Atlanta, Georgia**

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

**Client: Confidential, Escondido, California**

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

**Client: Confidential, San Francisco, California**

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

**Client: Confidential, Bogotá, Columbia**

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

**Client: Confidential, Los Angeles, California**

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

**Client: Confidential, Los Angeles, California**

Managed remedial investigation (RI) of heavy metals and volatile organic chemicals (VOCs) for a 15-acre former manufacturing facility. The RI investigation of the site included over 800 different sampling locations and the collection of soil, soil gas, and groundwater samples. The site is currently used as a year round school housing approximately 3,000 children. The Remedial Investigation was performed in a manner



that did not interrupt school activities and met the time restrictions placed on the project by the overseeing regulatory agency. The RI Report identified the off-site source of metals that impacted groundwater beneath the site and the sources of VOCs in soil gas and groundwater. The RI included a numerical model of vapor intrusion into the buildings at the site from the vadose zone to determine exposure concentrations and an air dispersion model of VOCs from the proposed soil vapor treatment system. The Feasibility Study for the Site is currently being drafted and may be used as the basis for granting closure of the site by DTSC.

**Client: Confidential, Los Angeles, California**

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

**Client: Confidential, Los Angeles, California**

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

Client –Dominguez Energy, Carson, California

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

**Kaiser Ventures Incorporated, Fontana, California**

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

ANR Freight - Los Angeles, California

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

**Kaiser Ventures Incorporated, Fontana, California**

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

**Unocal Corporation - Los Angeles, California**

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

**Client: Confidential, Los Angeles, California**

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

**Client: Confidential, San Francisco, California**

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

**Client: Confidential, San Francisco, California**

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

**IT Corporation, North Carolina**

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

**Professional Associations**

American Public Health Association (APHA)

Association for Environmental Health and Sciences (AEHS)

American Chemical Society (ACS)

California Redevelopment Association (CRA)

International Society of Environmental Forensics (ISEF)

Society of Environmental Toxicology and Chemistry (SETAC)

**Publications and Presentations:**

**Books and Book Chapters**

Sullivan, P., **J.J. J. Clark**, F.J. Agardy, and P.E. Rosenfeld. (2007). *Synthetic Toxins In The Food, Water and Air of American Cities*. Elsevier, Inc. Burlington, MA.

Sullivan, P. and **J.J. J. Clark**. 2006. *Choosing Safer Foods, A Guide To Minimizing Synthetic Chemicals In Your Diet*. Elsevier, Inc. Burlington, MA.

Sullivan, P., Agardy, F.J., and **J.J.J. Clark**. 2005. *The Environmental Science of Drinking Water*. Elsevier, Inc. Burlington, MA.

Sullivan, P.J., Agardy, F.J., **Clark, J.J.J.** 2002. *America's Threatened Drinking Water: Hazards and Solutions*. Trafford Publishing, Victoria B.C.

**Clark, J.J.J.** 2001. "TBA: Chemical Properties, Production & Use, Fate and Transport, Toxicology, Detection in Groundwater, and Regulatory Standards" in *Oxygenates in the Environment*. Art Diaz, Ed.. Oxford University Press: New York.

**Clark, J.J.J.** 2000. "Toxicology of Perchlorate" in *Perchlorate in the Environment*. Edward Urbansky, Ed. Kluwer/Plenum: New York.

**Clark, J.J.J.** 1995. Probabilistic Forecasting of Volatile Organic Compound Concentrations At The Soil Surface From Contaminated Groundwater. UMI.

Baker, J.; **Clark, J.J.J.**; Stanford, J.T. 1994. Ex Situ Remediation of Diesel Contaminated Railroad Sand by Soil Washing. Principles and Practices for Diesel Contaminated Soils, Volume III. P.T. Kostecki, E.J. Calabrese, and C.P.L. Barkan, eds. Amherst Scientific Publishers, Amherst, MA. pp 89-96.

#### **Journal and Proceeding Articles**

- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, Volume 70 (2008) page 002254.
- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, Volume 70 (2008) page 000527
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** (2007). "Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." *Environmental Research*. 105:194-199.
- Rosenfeld, P.E., **Clark, J. J.**, Hensley, A.R., and Suffet, I.H. 2007. "The Use Of An Odor Wheel Classification For The Evaluation of Human Health Risk Criteria For Compost Facilities" *Water Science & Technology*. 55(5): 345-357.
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 2006. "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13<sup>th</sup> Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2004. "The Value Of An Odor Quality Classification Scheme For Urban Odor" WEFTEC 2004. 77th Annual Technical Exhibition & Conference October 2 - 6, 2004, Ernest N. Morial Convention Center, New Orleans, Louisiana.
- Clark, J.J.J.** 2003. "Manufacturing, Use, Regulation, and Occurrence of a Known Endocrine Disrupting Chemical (EDC), 2,4-Dichlorophenoxyacetic Acid (2,4-D) in California Drinking Water Supplies." National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Minneapolis, MN. March 20, 2003.

- Rosenfeld, P. and **J.J.J. Clark**. 2003. "Understanding Historical Use, Chemical Properties, Toxicity, and Regulatory Guidance" National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Phoenix, AZ. February 21, 2003.
- Clark, J.J.J.**, Brown A. 1999. Perchlorate Contamination: Fate in the Environment and Treatment Options. In Situ and On-Site Bioremediation, Fifth International Symposium. San Diego, CA, April, 1999.
- Clark, J.J.J.** 1998. Health Effects of Perchlorate and the New Reference Dose (RfD). Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.
- Browne, T., **Clark, J.J.J.** 1998. Treatment Options For Perchlorate In Drinking Water. Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.
- Clark, J.J.J.**, Brown, A., Rodriguez, R. 1998. The Public Health Implications of MtBE and Perchlorate in Water: Risk Management Decisions for Water Purveyors. Proceedings of the National Ground Water Association, Anaheim, CA, June 3-4, 1998.
- Clark J.J.J.**, Brown, A., Ulrey, A. 1997. Impacts of Perchlorate On Drinking Water In The Western United States. U.S. EPA Symposium on Biological and Chemical Reduction of Chlorate and Perchlorate, Cincinnati, OH, December 5, 1997.
- Clark, J.J.J.**; Corbett, G.E.; Kerger, B.D.; Finley, B.L.; Paustenbach, D.J. 1996. Dermal Uptake of Hexavalent Chromium In Human Volunteers: Measures of Systemic Uptake From Immersion in Water At 22 PPM. *Toxicologist*. 30(1):14.
- Dodge, D.G.; **Clark, J.J.J.**; Kerger, B.D.; Richter, R.O.; Finley, B.L.; Paustenbach, D.J. 1996. Assessment of Airborne Hexavalent Chromium In The Home Following Use of Contaminated Tapwater. *Toxicologist*. 30(1):117-118.
- Paulo, M.T.; Gong, H., Jr.; **Clark, J.J.J.** (1992). Effects of Pretreatment with Ipratropium Bromide in COPD Patients Exposed to Ozone. *American Review of Respiratory Disease*. 145(4):A96.
- Harber, P.H.; Gong, H., Jr.; Lachenbruch, A.; **Clark, J.**; Hsu, P. (1992). Respiratory Pattern Effect of Acute Sulfur Dioxide Exposure in Asthmatics. *American Review of Respiratory Disease*. 145(4):A88.
- McManus, M.S.; Gong, H., Jr.; Clements, P.; **Clark, J.J.J.** (1991). Respiratory Response of Patients With Interstitial Lung Disease To Inhaled Ozone. *American Review of Respiratory Disease*. 143(4):A91.
- Gong, H., Jr.; Simmons, M.S.; McManus, M.S.; Tashkin, D.P.; Clark, V.A.; Detels, R.; **Clark, J.J.** (1990). Relationship Between Responses to Chronic Oxidant and Acute

Ozone Exposures in Residents of Los Angeles County. American Review of Respiratory Disease. 141(4):A70.

Tierney, D.F. and **J.J.J. Clark**. (1990). Lung Polyamine Content Can Be Increased By Spermidine Infusions Into Hyperoxic Rats. American Review of Respiratory Disease. 139(4):A41.

# **EXHIBIT 3**

# ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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January 24, 2021

*Of Counsel*  
MARC D. JOSEPH  
DANIEL L. CARDOZO

*\*Not admitted in California.  
Licensed in Colorado.*

### **VIA EMAIL ONLY**

President Samantha Millman  
Members of the City Planning Commission,  
City of Los Angeles  
Ms. Cecilia Lamas, Comm. Exec. Assist.  
**Email:** [cpc@lacity.org](mailto:cpc@lacity.org)

Vince Bertoni, Director of Planning  
Stephanie Escobar, Planning Assistant  
City Planning Department  
**Email:** [vince.bertoni@lacity.org](mailto:vince.bertoni@lacity.org);  
[stephanie.escobar@lacity.org](mailto:stephanie.escobar@lacity.org)

**Re: Agenda Items 10 and 11: 655 Mesquit Project: ENV-2020-6829-EAF CPC-2020-6828-GPA-ZC-HD-SPR-MCUP; VTT-83288-1A**

Dear President Millman, Commissioners, Ms. Lamas, Mr. Bertoni, Ms. Escobar:

These comments are submitted on behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”) regarding City Planning Commission (“CPC”) Agenda Items 10 and 11 related to the 655 Mesquit Street Project (Case No. CPC-2020-6828-GPA-ZC-HD-SPR-MCUP; Environmental Case No. ENV-2020-6829-EAF; VTT-83288-1A (“Project”), proposed by 655 Mesquit, LLC (“Applicant”). Agenda Item 10 addresses CREED LA’s appeal of the determinations made by the Advisory Agency on December 22, 2021, including approval of the Vesting Tentative Tract Map (“VTTM”), VTT-83288-1A. Agenda Item 11 addresses the CPC’s consideration of the Project’s remaining entitlements.

The City released two separate Staff Reports covering the VTTM appeal and the remaining entitlements less than one week ago, consisting of over 3,200 pages, none of which responded to CREED LA’s October 13, 2021 comments on the Mitigated Negative Declaration (“MND”) prepared by the City of Los Angeles (“City”) for the Project. We had to reach out to City staff separately to request a copy of the City’s responses to Comments (“Responses”). The Responses are dated December 13, 2021, demonstrating that they were prepared over a month ago and should have been attached to the Staff Reports.<sup>1</sup>

Based upon our review of the Staff Report and Responses,<sup>2</sup> we continue to conclude that the MND fails to comply with the requirements of CEQA.

<sup>1</sup> See CPC staff report for Agenda Item 10, p. 84, [https://planning.lacity.org/plndoc/Staff\\_Reports/2022/01-19-2022/VTT\\_83288\\_1A.pdf#page=84](https://planning.lacity.org/plndoc/Staff_Reports/2022/01-19-2022/VTT_83288_1A.pdf#page=84)

<sup>2</sup> We prepared these comments with environmental health and air quality expert Dr. James Clark, Ph.D. See **Attachment A:** Letter from J. Clark re *Appeal of Determinations by the Advisory Agency regarding 655 Mesquit Project* (January 24, 2022) (“Clark Comments”).  
L5691-006acp



The City may not approve the Project until it prepares a legally adequate environmental impact report (“EIR”).<sup>3</sup>

**I. An EIR Is Required Because There Is Substantial Evidence Supporting A Fair Argument That The Project Has Significant, Unmitigated Impacts**

**A. Substantial Evidence Still Supports a Fair Argument that the MND still has not addressed underlying Air Quality Issues**

First, the City states that “the assertion that a detailed Health Risk Assessment (HRA) level analysis is required for the Proposed Project is not correct and is not supported by any adopted regulations or legal requirements under CEQA.”<sup>4</sup> This statement is unsupported by law and is in direct opposition to the Supreme Court's holding that environmental review documents prepared pursuant to CEQA must analyze the health risk of commercial development projects like this one.<sup>5</sup> The court explains that the lead agency must “translate the bare numbers provided into adverse health impacts or to understand why such translation is not possible at this time.”<sup>6</sup> The City still failed to address this deficiency in the MND.

Secondly, the City misconstrued Dr. Clark’s comments regarding backup generators (“BUG”) and the air quality and health risk analysis required. The City states that analysis demonstrating 200 hours of usage would be speculative given the unpredictable nature of power outages. This is incorrect, as Dr. Clark provided substantial evidence demonstrating that it is reasonably foreseeable that the BUG would operate more than the mere 12 hours of testing estimated in the MND and potentially up to 200 hours per year in response to planned and unplanned power outages. The Responses also fail to address the underlying comment. Dr. Clark’s comment addressed the failure to provide any analysis regarding BUG usage during a power outage, which the BUG’s underlying purpose. This lack of analysis is a failure to analyze reasonably foreseeable uses since substantial evidence demonstrates that EHE and power outages are recurring yearly and only increasing, and the purpose of a BUG is to provide emergency backup power.<sup>7</sup> The City must remedy this omission in an EIR.<sup>8</sup>

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<sup>3</sup> CREED LA’s responses to the Staff Report and Responses are summarized briefly herein and in the attached expert comments. CREED LA reserves the right to supplement these comments with additional evidence and responses at a later time before the final decisional hearing. Gov. Code § 65009(b); Pub. Res. Code (“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> Responses, p. 14.

<sup>5</sup> *Sierra Club v. County of Fresno* (2018), 6 Cal.5th 521.

<sup>6</sup> *Id.*

<sup>7</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; See Adams Broadwell October 13, 2021 Letter, p.12.

<sup>8</sup> The City’s failure to account for these errors also impacts its analysis regarding the cumulative impacts on air quality. We reincorporate our previous comments regarding cumulative impacts, which have not been addressed.

L5691-

**B. Substantial Evidence Still Supports a Fair Argument that the Project Has Potentially Significant Soil Vapor Impacts**

CEQA requires that an MND disclose the severity of a project's impacts and the probability of their occurrence *before* a project can be approved.<sup>9</sup> The MND violated these basic disclosure requirements by failing to accurately analyze the health risk posed by soil vapor intrusion at the Project site.<sup>10</sup> Dr. Clark concluded that, when properly analyzed, the maximum risk from soil vapor intrusion exceeds the DTSC significance threshold for carcinogenic chemicals of 10 in 1,000,000 for commercial workers on site.<sup>11</sup> The Responses now acknowledge that additional soil vapor analysis is required, but propose to defer the analysis to a future "additional vapor sampling" study that would not be circulated for public review and may not ensure that the of the Project's impacts on human health are adequately mitigated.<sup>12</sup> This is a new CEQA violation.

The MND failed to evaluate this impact, in violation of CEQA.<sup>13</sup> As a result of its failure to investigate, the MND lacked substantial evidence to support its conclusion that the impacts from disturbing contaminated soil would be mitigated. The Staff Report and Responses propose to defer this analysis until after Project approval, a procedural violation which fails to rebut substantial evidence supporting a fair argument that the Project has significant hazards impacts.

**II. The Advisory Agency's CEQA Findings Were Premature and Unsupported and the Subsequent Review Standard is Inapplicable**

The LOD states that the Advisory Agency "adopted" the MND on December 22, 2021, in conjunction with approval of the VTTM.<sup>14</sup> The Project's remaining entitlements are still pending final approval by the CPC (Conditional Use and Site Plan Review) and 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 and the Advisory Agency's "adoption" of the MND was therefore premature and in violation of CEQA.<sup>15</sup>

To approve an MND, CEQA requires that the lead agency determine whether the MND fully and accurately describes a specific development project that is "proposed to be carried out or approved by [the agency],"<sup>16</sup> then make findings that the project will not have a significant effect on the environment, and that mitigation measures have been included in the project to avoid potentially significant effects.<sup>17</sup> The Advisory Agency lacked the legal capacity to make those

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<sup>9</sup> 14 CCR §§ 15143, 15070(a); *Cal. Build. Indust. Ass'n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90 ("*CBIA v. BAAQMD*") (disturbance of toxic soil contamination at project site is potentially significant impact requiring CEQA review and mitigation); *Madera Oversight Coalition*, 199 Cal.App.4th at 82; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs. ("Berkeley Jets")* (2001) 91 Cal.App.4th 1344, 1370-71; CEQA Guidelines, Appendix G.

<sup>10</sup> See MND Comments, pp. 14-16; Clark MND comments, pp. 5-7.

<sup>11</sup> *Id.*

<sup>12</sup> Responses, p. 21.

<sup>13</sup> 14 CCR § 15126.2(a); *CBIA v. BAAQMD*, 62 Cal.4th at 388-90.

<sup>14</sup> LOD, p. 12.

<sup>15</sup> *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 426-27.

<sup>16</sup> PRC § 21080(a).

<sup>17</sup> 14 CCR § 15071(c), (e).

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 could not adopt the MND for the Project as a whole.

CEQA mandates that agencies refrain from adopting an MND before full consideration of all aspects of a project, regardless of what LAMC sections 17.03 and 17.15 state.<sup>18</sup> The Advisory Agency's actions in adopting the MND before the majority of the Project's entitlements had been considered by the CPC or City Council was a clear violation of CEQA, which "skirt[red] the purpose of CEQA by segregating environmental review of the [MND] from the project approval."<sup>19</sup>

Lastly, the City states that *County of Amador, Coalition for an Equitable Westlake, Stockton Citizens for Sensible Planning, Coalition for Clean Air, and Habitat & Watershed Caretakers* are all inapplicable because they do not relate to the Project or circumstances surrounding the Project. Under such reasoning, no judicial opinion could ever be applied to current projects. Contrary to the City's assertion, the above cases do support the proposition that CEQA approvals may not take place prior to all the entitlements being decided, as is occurring here. The CPC should uphold this appeal, vacate the Advisory Agency's approval of the MND and approval of the VTTM, and vacate its CEQA findings.

### **III. The Advisory Agency's Subdivision Map Act Findings and Entitlement Determinations Were Unsupported by Substantial Evidence**

As discussed above, there is substantial evidence in the record supporting a fair argument that the Project has potentially significant impacts to air quality, GHG emissions, noise, and hazardous materials. Thus, the VTTM findings and other entitlement findings could not be properly adopted as described in the LOD and thus need to be rescinded.

### **IV. CONCLUSION**

We urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing a legally adequate EIR to address the potentially significant impacts.

Sincerely,



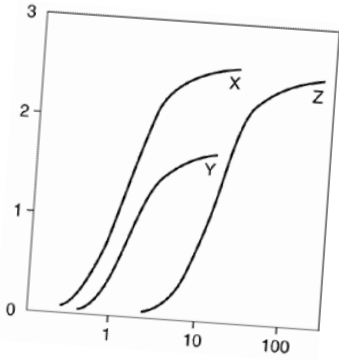
Darien Key

DKK:acp  
Attachment

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<sup>18</sup> *Id.*; 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; *Coal. for Clean Air v. Visalia* (2012) 209 Cal.App.4th 408, 418-25.

<sup>19</sup> *California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325, 1341.  
L5691-



January 24, 2022

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

**Attn: Mr. Darien Key**

**Clark & Associates**  
Environmental Consulting, Inc.

**Subject: Response To Comments Prepared By Parker  
Environmental Consultants Re 655 Mesquit Street  
Project Case Number: ENV-2020-6829-EAF CPC-2020-  
6828-GPA--HD-SPR-MCUP**

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jclark.assoc@gmail.com

Dear Mr. Key:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the 2021 City of Los Angeles Initial Study/Mitigated Negative Declaration (IS/MND) 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.'

Parker Environmental Consultant's (Parker's) review of the comments misses the bigger picture regarding the health impacts of the proposed Project (emission of TACs from the backup generator, vapor intrusion from known contamination in the subsurface, and the clear failure to perform a health risk analysis).

**Specific Comments:**

- 1. In The Response To Comment 1.7, Parker and The City Incorrectly Assert That A Health Risk Analysis Is Not Required Since The Local Significance Thresholds (LSTs) And Regional Screening Levels For Criteria Pollutants Were Not Exceeded.**

LSTs and Regional Screening Levels are designed only for criteria pollutants, not toxic air contaminants. Claiming that the fact that the Project does not exceed the LST or Regional Screenings Levels is protective of the health of residents in the area is patently false. A more accurate statement regarding health risks to the residents of Downtown Los Angeles is found in the South Coast Air

Quality Management District's (SCAQMD's) Multiple Air Toxics Exposure Study in the South Coast Air Basin (MATES IV) study on page 2-11, which found that "diesel particulate has been and still is the major contributor to air toxics risk."

In the response to Comment 1.7, Parker asserts that "Health Risk Assessments are required for stationary sources, which the Proposed Project is not. Stationary sources are typically industrial type uses that emit toxic air contaminants (TACs) and are regulated by and/or require permits from the Air Districts. The Proposed Project would include commercial offices and restaurant/bar uses and would not include any land use that will require a stationary source permit from CARB or the SCAQMD." This statement is clearly inaccurate. The project includes a 750-1000 horsepower back-up generator which will be powered by diesel fuel. (See MND CalEEMod inputs, Section 10.1). Diesel back-up generators greater than 50 horsepower are considered stationary sources and require a SCAQMD permit to operate.<sup>1</sup> The combustion of diesel fuel leads to the release of diesel particulate matter (DPM), a toxic air contaminant (TAC), from a fixed location (a stationary source). The City must correct this error by preparing and circulating a new Environmental Site Assessment in an environmental impact report (EIR) for the Project which includes a clear analysis of the impacts from the sources of DPM that will be associated with the Project.

**2. In The Response To Comment 1.8, Parker and The City Incorrectly Assert That The Back Up Generator (BUG) Onsite Will Only Be Operated For 0.5 Hours Per Month For the Duration Of The Project Operational Phase.**

This response is clearly an attempt to minimize the impacts of the BUG emissions in the IS/MND and ignores the substantial evidence provided in our comment letter demonstrating that it is reasonably likely that the BUG would be operated for longer periods than assumed by Parker due to the need for emergency power generation during both planned and unplanned power outages. In the response, Parker claims that "As a normal course of business, the generator would be used for 0.5 hour per month duration for routine testing and inspection once a month." This assumption means that the BUG would be operated for 6 hours per year (0.5 hours per month x 12 months = 6 hours), for testing and inspection only, and never used for its stated purpose of emergency power generation. That is an unreasonable assumption.

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<sup>1</sup> See e.g. SCAQMD Rule 1470(c)(3); <https://www.aqmd.gov/home/rules-compliance/compliance/rule-1470-requirements>.

A closer look at the CalEEMOD analysis of the Project shows that the City is aware that the BUG would be operated for at least 12 hours a year for testing, more than double the time asserted in the Parker responses. This conflict clearly shows that the City is attempting to minimize the emissions from the BUG and fails to consider how it will actually be operated.

### 10.0 Stationary Equipment

#### Fire Pumps and Emergency Generators

Equipment Type	Number	Hours/Day	Hours/Year	Horse Power	Load Factor	Fuel Type
Emergency Generator	1	0.5	12	1000	0.73	Diesel

### 10.1 Stationary Sources

#### Unmitigated/Mitigated

	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	
Equipment Type	lb/day										lb/day						
Emergency Generator - Diesel (750 - 9999 HP)	0.8204	3.6694	2.0922	3.9400e-003		0.1207	0.1207		0.1207	0.1207			419.7571	419.7571	0.0589		421.2283
<b>Total</b>	<b>0.8204</b>	<b>3.6694</b>	<b>2.0922</b>	<b>3.9400e-003</b>		<b>0.1207</b>	<b>0.1207</b>		<b>0.1207</b>	<b>0.1207</b>			<b>419.7571</b>	<b>419.7571</b>	<b>0.0589</b>		<b>421.2283</b>

As previously stated, according to SCAQMD Rules 1110.2, 1470, back-up generators (BUGs) are allowed to operate for up to 200 hours per year and maintenance *cannot exceed* more than 50 hours per year.

The assumption by the City that maintenance and testing of the BUG would not exceed 6 hours per year is unsupported, given that as machines age, they require more maintenance to operate efficiently. The assumption also fails to account for actual emergency power generation during outages. The assertion that the BUG can be maintained over its lifetime with 6 hours per year of operation is aspirational and unsupported by any facts in the record.

Using the SCAQMD's Rule 1401 Risk Assessment Programs Risk Tool V1.103 software, it is possible to generate a site-specific screening level HRA for emissions from the BUG. Assuming the system is restricted to maintenance and testing for 12 hours per year (the amount assumed in the MND's CalEEMod analysis), the model calculates emissions of DPM of approximately 0.0892 lbs per year (attached to this letter).

Assuming the generator's emissions will be vented at the ground level, the vent to the generator would be approximately 14 feet above grade level. For the Risk Tool inputs, the stack height (exit point of the generator) was set to 14 feet above grade.

Based on the emission of 0.0892 lbs per year of DPM, the SCAQMD Risk Tool calculates a risk of 18.1 in 1,000,000 for residents living within 80 feet (25meters) of the Project Site. Commercial workers located within 80 feet (25 meters) of the site face a potential health risk of 6.26 in 1,000,000. The model was set to assume T-BACT controls were in place for the generator.

The City must address this significant error in a revised air quality analysis. The City's air quality analysis is clearly deficient and must be supported by the preparation of an EIR.


### **3. Soil Vapor Investigations Must Be Performed Prior to Project Approval**

Parker agrees that additional soil vapor sampling must be conducted at the Project site "to ensure that the development of the future structure is protective of human health from a vapor intrusion perspective." The City must conduct this additional analysis prior to Project approval, and must include the results of the additional soil vapor sampling in an EIR for public review and comment before the Project can be approved. Without a quantitative assessment of the lateral and vertical extent of the vapor plume onsite, the City lacks evidence to support the MND's assumption that remedial action presumed by the removal of 31,500 cubic yards of soil during the excavation of the underground parking structure would eliminate all potential contamination. Absent the requisite soil vapor investigation, there is no evidence that soil removal will have the intended results.

### **Conclusion**

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the MND is approved. The City must re-evaluate the significant impacts identified in this letter by requiring the preparation of a draft environmental impact report.

Sincerely,

  
\_\_\_\_\_  
JAMES J. J. CLARK, Ph.D.

**TIER 2 SCREENING RISK ASSESSMENT REPORT**  
*(Procedure Version 8.1 & Package N, September 1, 2017) - Risk Tool V1.103*

A/N: \_\_\_\_\_

Fac: 3rd Street

Application deemed complete date: 1/1/2022

**1. Stack Data**

Equipment Type Generator

Combustion Eff 0.0  
With T-BACT

Operation Schedule 1 hrs/day  
1 days/week  
12 weeks/year

Stack Height 14 ft

Distance to Residential 25 m

Distance to Commercial 25 m

Meteorological Station USC/Downtown L.A.

**2. Tier 2 Data**

Dispersion Factors tables	Point Source
For Chronic X/Q	Table 6
For Acute X/Q max	Table 6.4

Dilution Factors

Receptor	X/Q ( $\mu\text{g}/\text{m}^3$ )(tons/yr)	X/Qmax ( $\mu\text{g}/\text{m}^3$ )(lbs/hr)
Residential	45.34	676.64
Commercial - Worker	45.34	676.64

Intake and Adjustment Factors

	Residential	Worker
Year of Exposure	30	
Combined Exposure Factor (CEF) - Table 4	677.40	55.86
Worker Adjustment Factor (WAF) - Table 5	1	4.20



**5a. MICR**

MICR Resident = CP (mg/(kg-day))<sup>-1</sup> \* Q (ton/yr) \* (X/Q) Resident \* CEF Resident \* MP Resident \* 1e-6 \* MWAF

MICR Worker = CP (mg/(kg-day))<sup>-1</sup> \* Q (ton/yr) \* (X/Q) Worker \* CEF Worker \* MP Worker \* WAF Worker \* 1e-6 \* MWAF

Compound	Residential	Commercial
Particulate Emissions from Diesel-Fueled En	1.81E-05	6.26E-06
<b>Total</b>	<b>1.81E-05</b>	<b>6.26E-06</b>
	<b>FAIL</b>	<b>PASS</b>

**5b. Is Cancer Burden Calculation Needed (MICR > 1E-6)?**

**YES**

New X/Q at which MICR<sub>70yr</sub> is one-in-a-million [(µg/m<sup>3</sup>)/(tons/yr)]: 2.22E+00  
 New Distance, interpolated from X/Q table using New X/Q (meter): 125.43  
 Zone Impact Area (km<sup>2</sup>): 4.94E-02  
 Zone of Impact Population (7000 person/km<sup>2</sup>): 3.46E+02  
**Cancer Burden:** 7.08E-03

**Cancer Burden is less than or equal to 0.5**

**PASS**



# LOS ANGELES CITY PLANNING COMMISSION

200 North Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300

[www.planning.lacity.org](http://www.planning.lacity.org)

## LETTER OF DETERMINATION

MAILING DATE: APR 12 2022

Case No. VTT-83288-1A

Council District: 14 - de León

CEQA: ENV-2020-6829-MND

Plan Area: Central City North

Related Case: CPC-2020-6828-GPA-ZC-HD-SPR-MCUP

**Project Site:** 635 – 657 Mesquit Street; 1585 East Jesse Street;  
632 – 648 Santa Fe Avenue

**Applicant:** 655 Mesquit, LLC, Mark Falcone c/o Roger Pecsok  
Representative: Alfred Fraijo, Jr., Esq., Sheppard Mullin Richter & Hampton LLP

**Appellant:** Coalition for Responsible Equitable Economic Development Los Angeles  
Representative: Christina Caro/Kelilah Federman, Adams, Broadwell, Joseph & Cardozo

At its meeting of **January 27, 2022**, the Los Angeles City Planning Commission took the actions below in conjunction with the approval of the following project:

Subdivision of five parcels into eight lots, including one master ground lot and seven airspace lots, for the construction, use, and maintenance of a 188,954 square foot, 14-story, commercial office building with 4,325 square feet of commercial ground floor. The Project will provide a total of 397 vehicle parking spaces and 146 bicycle parking spaces within five levels of above grade parking, and two levels of subterranean parking.

1. **Found**, pursuant to CEQA Guidelines Section 15074(b), after consideration of the whole of the administrative record, including the Mitigated Negative Declaration, No. ENV-2020-6829-MND, as circulated on September 23, 2021 (“Mitigated Negative Declaration”), and all comments received, with the imposition of mitigation measures, there is no substantial evidence that the Project will have a significant effect on the environment; **Found**, the Mitigated Negative Declaration reflects the independent judgment and analysis of the City; **Found**, the mitigation measures have been made enforceable conditions on the project; and **Adopted** the Mitigated Negative Declaration and the Mitigation Monitoring Program prepared for the Mitigated Negative Declaration;
2. **Denied** the appeal in part and **granted** the appeal in part and **sustained** the Deputy Advisory Agency’s Determination dated December 22, 2021;
3. **Approved**, pursuant to Sections 17.03 and 17.15 of Los Angeles Municipal Code (LAMC), a Vesting Tentative Tract Map, VTT No. 83288, for the subdivision of five parcels into eight lots, including one master ground lot and seven airspace lots in the M3-1 Zone;
4. **Adopted** the attached Modified Conditions of Approval; and
5. **Adopted** the attached Findings.

The vote proceeded as follows:

Moved: Perlman  
 Second: Choe  
 Ayes: Campbell, Hornstock, Mack, Dake Wilson  
 Absent: Leung, López-Ledesma, Millman

**Vote: 6 – 0**

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Cecilia Lamas, Commission Executive Assistant  
 Los Angeles City Planning Commission

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

**Effective Date/Appeals:** The decision of the Los Angeles City Planning Commission is further appealable to the Los Angeles City Council within 10 days after the mailing date of this determination letter. Any appeal not filed within the 10-day period shall not be considered by the Council and the decision of the City Planning Commission will become final and effective upon the close of the 10-day appeal period. All appeals shall be filed on forms provided at the Planning Department’s Development Service Centers located at: 201 North Figueroa Street, Fourth Floor, Los Angeles; 6262 Van Nuys Boulevard, Suite 251, Van Nuys; or 1828 Sawtelle Boulevard, West Los Angeles.

**FINAL APPEAL DATE: APR 22 2022**

Notice: An appeal of the CEQA clearance for the Project pursuant to Public Resources Code Section 21151(c) is only available if the Determination of the non-elected decision-making body (e.g., ZA, AA, APC, CPC) **is not further appealable** and the decision is final.

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City’s decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Modified Conditions of Approval, Findings, Interim Appeal Filing Procedures

- c: Heather Bleemers, Senior City Planner
- Oliver Netburn, City Planner
- Stephanie Escobar, Planning Assistant

## CONDITIONS OF APPROVAL

(As modified by the City Planning Commission at its meeting on January 27, 2022)

### BUREAU OF ENGINEERING - SPECIFIC CONDITIONS

*Any questions regarding these conditions should be directed to Quyen Phan of the Land Development Section, located at 201 North Figueroa Street, Suite 290, or by calling (213) 808-8604.*

1. That an 18-foot wide strip of land be dedicated adjoining Lots 113 and 114 of the Goodwin Tract along Santa Fe Avenue to complete a 43-foot wide half public street right-of-way in accordance with Avenue II of LA Mobility Plan 2035.
2. That 1-foot wide strip of land be dedicated along Jesse Street adjoining the subdivision to complete a 33-foot wide half public street right-of-way including a 15-foot by 15-foot corner cut at the intersection with Santa Fe Avenue.
3. That 1-foot wide strip of land and an 8-foot strip of land be dedicated along Mesquit Street adjoining the subdivision to complete a 33-foot wide half public street right-of-way including a 10-foot by 10-foot corner cut at the intersection with Jesse Street.
4. That the subdivider make a request to the Central District Office of the Bureau of Engineering to determine the capacity of existing sewers in this area.
5. That all tract boundary lines be properly established in accordance with Section 17.07D of the Los Angeles Municipal Code prior to recordation of the final map satisfactory to the City Engineer.
6. That a set of drawings for airspace lots be submitted to the City Engineer showing the followings:
  - a. Plan view at different elevations.
  - b. Isometric views.
  - c. Elevation views.
  - d. Section cuts at all locations where air space lot boundaries change.
7. That the owners of the property record an agreement satisfactory to the City Engineer stating that they will grant the necessary private easements for ingress and egress purposes to serve proposed airspace lots to use upon the sale of the respective lots and they will maintain the private easements free and clear of obstructions and in safe conditions for use at all times.

### DEPARTMENT OF BUILDING AND SAFETY, GRADING DIVISION

*Grading Division approvals are conducted at 221 North Figueroa Street, 12<sup>th</sup> Floor. The approval of this Tract Map shall not be construed as having been based upon geological investigation such as will authorize the issuance of building permits on the subject property. Such permits will be issued only at such time as the Department of Building and Safety has received such topographic maps and geological reports as it deems necessary to justify the issuance of such building permits.*

8. The applicant shall comply with any requirements with the Department of Building and Safety, Grading Division for recordation of the final map and issuance of any permit.

**DEPARTMENT OF BUILDING AND SAFETY, ZONING DIVISION**

*An appointment is required for the issuance of a clearance letter from the Department of Building and Safety. The applicant is asked to contact Eric Wong at (213) 482-6876 to schedule an appointment.*

9. Obtain - Provide copy of building records, plot plan, and approved building plans to verify the last legal use and the number of parking spaces required and provided on Lot 1.
10. Provide a copy of affidavit AFF-67756, OB-11447 and PKG-5672. Show compliance with all the conditions/requirements of the above affidavit(s) as applicable. Termination of above affidavit(s) may be required after the Map has been recorded. Obtain approval from the Department, on the termination form, prior to recording.
11. Provide a copy of CPC case CPC-2020-6828-GPA-ZC-HD-SPR-MCUP. Show compliance with all the conditions/requirements of the CPC case as applicable.
12. Show all street dedication(s) as required by Bureau of Engineering and provide net lot area after all dedication. "Area" requirements shall be re-checked as per net lot area after street dedication. Front and side yard requirements shall be required to comply with current code as measured from new property lines after dedication.
13. Provide building plans for Lot 1 to show compliance with current Los Angeles City Building Code concerning exterior wall/opening protection and exit requirements with respect to the new property lines. All noncompliance issues shall be corrected, required permits shall be obtained, and the final work inspected prior to a clearance letter being issued.
14. Required parking spaces are required to remain for the remaining structure on the site. Show location of all parking spaces and access driveways. Provide copies of permits and final inspection cards, for any new garages or carports.
15. Obtain Use of Land permits to relocate driveways and all required parking for each building onto their corresponding sites. Provide a copy of permits and signed inspection cards to show work has been completed.

**Notes:**

This property is located in a Methane Zone.

The existing or proposed building plans have not been checked for and shall comply with Building and Zoning Code requirements. With the exception of revised health or safety standards, the subdivider shall have a vested right to proceed with the proposed development in substantial compliance with the ordinances, policies, and standards in effect at the time the subdivision application was deemed complete. Plan check will be required before any construction, occupancy or change of use.

If the proposed development does not comply with the current Zoning Code, all zoning violations shall be indicated on the Map.

An appointment is required for the issuance of a clearance letter from the Department of Building and Safety. The applicant is asked to contact Eric Wong at (213) 482-6876 to schedule an appointment.

## **DEPARTMENT OF RECREATION AND PARKS**

*If you have any questions or comments regarding this information please feel free to contact Park Fees Staff at, (213) 202-2682 or rap.parkfees@lacity.org, at your convenience.*

16. The City of Los Angeles Department of Recreation and Parks determined that the proposed project has no anticipated recreation and park impacts therefore RAP has no recommendations regarding this project.

## **DEPARTMENT OF TRANSPORTATION**

*If you have any questions or comments regarding this information please feel free to contact LADOT Staff at, ladot.onestop@lacity.org at your convenience.*

17. A minimum of 20-foot reservoir space be provided between any security gate(s) and the property line when driveway is serving less than 100 parking spaces. Reservoir space will increase to 40-feet and 60-feet when driveway is serving more than 100 and 300 parking spaces respectively or as shall be determined to the satisfaction of the Department of Transportation.
18. Parking stalls shall be designed so that a vehicle is not required to back into or out of any public street or sidewalk. LAMC 12.21 A.
19. A parking area and driveway plan be submitted to the Citywide Planning Coordination Section of the Department of Transportation for approval prior to submittal of building permit plans for plan check by the Department of Building and Safety. Transportation approvals are conducted at 201 N. Figueroa Street Room 550. For an appointment please email: ladot.onestop@lacity.org.
20. That a fee in the amount of \$205 be paid for the Department of Transportation as required per Ordinance No. 180542 and LAMC Section 19.15 prior to recordation of the final map. Note: the applicant may be required to comply with any other applicable fees per this new ordinance.

## **FIRE DEPARTMENT**

The Fire Department has no objection to the Airspace Vacation. The Fire Department has no objection to Merger and Re-subdivision.

21. The applicant is further advised that all subsequent contact regarding these conditions must be with the Hydrant and Access Unit. This would include clarification, verification of condition compliance and plans or building permit applications, etc., and shall be accomplished BY APPOINTMENT ONLY, in order to assure that you receive service with a minimum amount of waiting please email lafdhydrants@lacity.org You should advise any consultant representing you of this requirement as well

## **DEPARTMENT OF WATER AND POWER**

*For any questions regarding the above comments, please contact Mr. Marshall Styers at (213)367-3541 or [Marshall.Styers@ladwp.com](mailto:Marshall.Styers@ladwp.com).*

22. Due to Federal Energy Regulatory Commission (FERC) and North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection CIP 014 requirements, the City shall coordinate with LADWP Security Services to resolve any potential issues with the 14 story commercial office building proposed directly south of the LADWP River Switching Station.
23. The City shall acknowledge the LADWP TLRW and Facilities are an integral component of the transmission line system, which provides electric power to the City of Los Angeles and other local communities. Their use is under the jurisdiction of the North American Electric Reliability Corporation (NERC), an organization of the Federal Energy Regulatory Commission (FERC). Safety and protection of critical facilities are the primary factors used to evaluate secondary land use proposals. The rights of way serve as platforms for access, construction, maintenance, facility expansion and emergency operations. Therefore, the proposed use may from time to time be subject to temporary disruption caused by such operations.
24. The project's applicant shall be responsible for the maintenance of the proposed Project area pertaining to (APN or Address) and shall keep the area in a neat and clean condition. It is our understanding that the project's applicant will assume responsibility for the maintenance of the project improvements. LADWP will not be liable for any damage to the proposed Project during LADWP's operation and maintenance activities.
25. LADWP TLRWs and Facilities contain high-voltage electrical equipment; therefore, the City shall utilize only such equipment, material, and construction techniques that are permitted under applicable safety ordinances and statutes, including the following: State of California Code of Regulations, Title 8, Industrial Relations, Chapter 4, Division of Industrial Safety, Subchapter 5, Electrical Safety Orders, and California Public Utilities Commission, General Order No. 95, Rules for Overhead Electric Line Construction.
26. LADWP shall not lose street access to the River Switching Station due to construction work for the proposed 655 Mesquit project or any other projects in the immediate vicinity of the River Switching Station.
27. If any excavations are required, utility agencies within the proposed excavation sites shall be notified of impending work. The City shall be responsible for coordinating there location of utilities, if any, within the Project boundaries. Before commencing any excavations, contact Underground Service Alert (a.k.a. Dig Alert).
28. Additional conditions may be required following review of detailed site plans, grading/drainage plans, etc.

#### **BUREAU OF STREET LIGHTING**

29. Prior to the recordation of the final map or issuance of the Certificate of Occupancy (C of O), street lighting improvement plans shall be submitted for review and the owner shall provide a good faith effort via a ballot process for the formation or annexation of the property within the boundary of the development into a Street Lighting Maintenance Assessment District.

#### **BUREAU OF SANITATION**

30. Satisfactory arrangements shall be made with the Bureau of Sanitation, Wastewater Collection Systems Division for compliance with its sewer system review and requirements. Upon compliance with its conditions and requirements, the Bureau of Sanitation, Wastewater Collection Systems Division will forward the necessary clearances to the Bureau of Engineering. (This condition shall be deemed cleared at the time the City Engineer clears Condition No. S-1. (d).)

### **URBAN FORESTRY**

*Removal or planting of any tree in the public right-of-way requires approval of the Board of Public Works. Contact Urban Forestry Division at: (213) 847-3077 for permit information. CEQA document must address parkway tree removals.*

31. Plant street trees and remove any existing trees within dedicated streets or proposed dedicated streets as required by the Urban Forestry Division of the Bureau of Street Services. Parkway tree removals shall be replanted at a 2:1 ratio. All street tree plantings shall be brought up to current standards. When the City has previously been paid for tree plantings, the sub divider or contractor shall notify the Urban Forestry Division at: (213)847-3077 upon completion of construction to expedite tree planting.

Note: Removal or planting of any tree in the public right-of-way requires approval of the Board of Public Works. Contact Urban Forestry Division at: (213)847-3077 for permit information. CEQA document must address parkway tree removals.

### **INFORMATION TECHNOLOGY AGENCY**

32. To assure that cable television facilities will be installed in the same manner as other required improvements, please email [cabletv.ita@lacity.org](mailto:cabletv.ita@lacity.org) that provides an automated response with the instructions on how to obtain the Cable TV clearance. The automated response also provides the email address of 3 people in case the applicant/owner has any additional questions.

### **DEPARTMENT OF CITY PLANNING-SITE SPECIFIC CONDITIONS**

33. Prior to the recordation of the final map, the subdivider shall prepare and execute a Covenant and Agreement (Planning Department General Form CP-6770) in a manner satisfactory to the Planning Department, binding the subdivider and all successors to the following:
- a. A Certificate of Occupancy (temporary or final) for the building(s) in Vesting Tentative Tract Map No. 83288 shall not be issued until after the final map has been recorded.
  - b. Limit the proposed development to a maximum eight lots, including one (1) ground lot and seven (7) airspace lots.
  - c. Parking shall be provided in accordance with the LAMC and CPC-2020-6828-GPA-ZC-HD-SPR-MCUP.
  - d. That a solar access report shall be submitted to the satisfaction of the Advisory Agency prior to obtaining a grading permit.



- e. That the subdivider considers the use of natural gas and/or solar energy and consults with the Department of Water and Power and Southern California Gas Company regarding feasible energy conservation measures.
  - f. Recycling bins shall be provided at appropriate locations to promote recycling of paper, metal, glass, and other recyclable material.
34. Prior to the issuance of the building permit or the recordation of the final map, a copy of the approval for Case No. CPC-2020-6828-GPA-ZC-HD-SPR-MCUP shall be submitted to the satisfaction of the Advisory Agency. In the event that Case No. CPC-2020-6828-GPA-ZC-HD-SPR-MCUP is not approved, the subdivider shall submit a tract modification.
35. Prior to the clearance of any tract map conditions, the applicant shall show proof that all fees have been paid to the Department of City Planning, Expedited Processing Section.
36. **Indemnification and Reimbursement of Litigation Costs.** Applicant shall do all of the following:
- a. Defend and hold harmless the City from any and all actions against the City relating to or arising out of, in whole or in part, the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void, or otherwise modify or annul the approval of the entitlement, the environmental review of the entitlement, or the approval of subsequent permit decisions, or to claim personal property damage, including from inverse condemnation or any other constitutional claim.
  - b. Reimburse the City for any and all costs incurred in defense of an action related to or arising out of, in whole or in part, the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgment or awards against the City (including an award of attorney's fees), damages, and/or settlement costs.
  - c. Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than \$50,000. The City's failure to notice or collect the deposit does not relieve the applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (b).
  - d. Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (b).
  - e. If the City determines it necessary to protect the City's interests, execute the indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

- f. The City shall notify the applicant within a reasonable period of time of its receipt of any action and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action, or proceeding in a reasonable time, or if the City fails to reasonably cooperate in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the applicant of any obligation imposed by this condition. In the event that applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

"City" shall be defined to include the City, its agents, officers, boards, commissions, committees, employees, and volunteers.

"Action" shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims, or lawsuits. Actions include actions, as defined herein, alleging failure to comply with any federal, state or local law.

Nothing in the definitions included in this paragraph are intended to limit the rights of the City or the obligations of the applicant otherwise created by this condition.

## **ENVIRONMENTAL MITIGATION MEASURES**

### **MM-1. Tribal Cultural Resources:**

Prior to commencing any ground disturbance activities at the Project site, the Applicant or its successor, shall retain archeological monitors and tribal monitors that are qualified to identify subsurface tribal cultural resources. Ground disturbance activities shall include excavating, digging, trenching, plowing, drilling, tunneling, quarrying, grading, leveling removing peat, clearing, driving posts, augering, backfilling, blasting, stripping topsoil or a similar activity at the project site. Any qualified tribal monitor(s) shall be approved by a tribal representative of a traditionally and culturally affiliated California Native American tribe that is geographically associated with the project locale; however, after good faith effort to retain a tribal monitor, if the Tribe is unable to provide an on-site monitor at the time of any demolition, grading or excavation activities, the Applicant may proceed with construction). Any qualified archeological monitor(s) shall be approved by the Department of City Planning, Office of Historic Resources ("OHR").

The qualified archeological and tribal monitors shall observe all ground disturbance activities on the project site at all times the ground disturbance activities are taking place. If ground disturbance activities are simultaneously occurring at multiple locations on the project site, an archeological and tribal monitor shall be assigned to each location where the ground disturbance activities are occurring. The on-site monitoring shall end when the ground disturbing activities are completed, or when the archeological and tribal monitor both indicate that the site has a low potential for impacting tribal cultural resources.

Prior to commencing any ground disturbance activities, the archaeological monitor in consultation with the tribal monitor, shall provide Worker Environmental Awareness Program (WEAP) training to construction crews involved in ground disturbance activities that provides information on regulatory requirements for the protection of tribal cultural resources. As part of the WEAP training, construction crews shall be briefed on proper procedures to follow should a crew member discover tribal cultural resources during ground disturbance activities. In addition, workers will be shown examples of the types of resources that would require notification of the archaeological monitor and tribal monitor. The Applicant shall maintain on the Project site, for City inspection, documentation establishing the training was completed for all members of the construction crew involved in ground disturbance activities.

In the event that any subsurface objects or artifacts that may be tribal cultural resources are encountered during the course of any ground disturbance activities, all such activities shall temporarily cease within the area of discovery, the radius of which shall be determined by a qualified archeologist, in consultation with a qualified tribal monitor, until the potential tribal cultural resources are properly assessed and addressed pursuant to the process set forth below:

1. Upon a discovery of a potential tribal cultural resource, the Applicant, or its successor shall immediately stop all ground disturbance activities in the vicinity of the find and contact the following: (1) all California Native American tribes that have informed the City they are traditionally and culturally affiliated with the geographic area of the proposed project; (2) and OHR.
2. If OHR determines, pursuant to Public Resources Code Section 21074 (a)(2), that the object or artifact appears to be a tribal cultural resource in its discretion and supported by substantial evidence, the City shall provide any affected tribe a reasonable period of time, not less than 14 days, to conduct a site visit and make recommendations to the Applicant, or its successor, and the City regarding the monitoring of future ground disturbance activities, as well as the treatment and disposition of any discovered tribal cultural resources.
3. The Applicant, or its successor, shall implement the tribe's recommendations if a qualified archaeologist retained by the City and paid for by the Applicant, or its successor, in consultation with the tribal monitor, reasonably conclude that the tribe's recommendations are reasonable and feasible.
4. In addition to any recommendations from the tribal representative, a qualified archeologist shall develop a list of actions that shall be taken to avoid or minimize impacts to the identified tribal cultural resources substantially consistent with best practices identified by the Native American Heritage Commission and in compliance with any applicable federal, state or local law, rule or regulation.
5. If the Applicant, or its successor, does not accept a particular recommendation determined to be reasonable and feasible by the qualified archaeologist or qualified tribal monitor, the Applicant, or its successor, may request mediation by a mediator agreed to by the Applicant, or its successor, and the City. The mediator must have the requisite professional qualifications and experience to mediate such a dispute. The City shall make the determination as to whether the mediator is at least minimally qualified to mediate the dispute. After making a reasonable effort to mediate this particular dispute, the City may (1) require the recommendation be implemented as originally proposed by the

archaeologist or tribal monitor; (2) require the recommendation, as modified by the City, be implemented as it is at least as equally effective to mitigate a potentially significant impact; (3) require a substitute recommendation be implemented that is at least as equally effective to mitigate a potentially significant impact to a tribal cultural resource; or (4) not require the recommendation be implemented because it is not necessary to mitigate any significant impacts to tribal cultural resources. The Applicant, or its successor, shall pay all costs and fees associated with the mediation.

6. The Applicant, or its successor, may recommence ground disturbance activities outside of a specified radius of the discovery site, so long as this radius has been reviewed by both the qualified archaeologist and qualified tribal monitor and determined to be reasonable and appropriate.
7. The Applicant, or its successor, may recommence ground disturbance activities inside of the specified radius of the discovery site only after it has complied with all of these commendations developed and approved pursuant to the process set forth in paragraphs 2 through 4 above.
8. Copies of any subsequent prehistoric archaeological study, tribal cultural resources study or report, detailing the nature of any significant tribal cultural resources, remedial actions taken, and disposition of any significant tribal cultural resources shall be submitted to the South Central Coastal Information Center (SCCIC) at California State University, Fullerton and to the Native American Heritage Commission for inclusion in its Sacred Lands File.
9. Notwithstanding paragraph 8 above, any information that the Department of City Planning, in consultation with the City Attorney's Office, determines to be confidential in nature shall be excluded from submission to the SCCIC or provided to the public under the applicable provisions of the California Public Records Act, California Public Resources Code, section 6254(r), and handled in compliance with the City's AB 52 Confidentiality Protocols.

#### **MM-2. Transportation Demand Management (TDM) Strategies:**

- Parking - Price Workplace Parking (50% of employees assumed eligible, \$6 daily parking charge assumed)
- Education & Encouragement - Promotions and Marketing (100% of employees eligible)
- Commute Trip Reductions - Ride-share program (100% of employees eligible)
- Bicycle Infrastructure - Provide bicycle parking per LAMC

#### **BUREAU OF ENGINEERING – STANDARD CONDITIONS**

- S-1
- a. That the sewerage facilities charge be deposited prior to recordation of the final map over all of the tract in conformance with Section 64.11.2 of the LAMC.
  - d. That survey boundary monuments be established in the field in a manner satisfactory to the City Engineer and located within the California Coordinate System prior to recordation of the final map. Any alternative measure approved by the City Engineer would require prior submission of complete field notes in support of the boundary survey.

- e. That satisfactory arrangements be made with both the Water System and the Power System of the Department of Water and Power with respect to water mains, fire hydrants, service connections and public utility easements.
  - f. That any necessary sewer, street, drainage and street lighting easements be dedicated. In the event it is necessary to obtain off-site easements by separate instruments, records of the Bureau of Right-of-Way and Land shall verify that such easements have been obtained. The above requirements do not apply to easements of off-site sewers to be provided by the City.
  - g. That drainage matters be taken care of satisfactory to the City Engineer.
  - h. That satisfactory street, sewer and drainage plans and profiles as required together with a lot grading plan of the tract and any necessary topography of adjoining areas be submitted to the City Engineer.
  - i. That any required slope easements be dedicated by the final map.
  - j. That each lot in the tract complies with the width and area requirements of the Zoning Ordinance.
  - k. That 1-foot future streets and/or alleys be shown along the outside of incomplete public dedications and across the termini of all dedications abutting unsubdivided property. The 1-foot dedications on the map shall include a restriction against their use of access purposes until such time as they are accepted for public use.
  - l. That any 1-foot future street and/or alley adjoining the tract be dedicated for public use by the tract, or that a suitable resolution of acceptance be transmitted to the City Council with the final map.
  - m. That no public street grade exceeds 15%.
  - n. That any necessary additional street dedications be provided to comply with the Americans with Disabilities Act (ADA) of 2010
- S-2. That the following provisions be accomplished in conformity with the improvement constructed herein:
- b. That survey boundary monuments be established in the field in a manner satisfactory to the City Engineer and located within the California Coordinate System prior to recordation of the final map. Any alternative measure approved by the City Engineer would require prior submission of complete field notes in support of the boundary survey.
  - c. Survey monuments shall be placed and permanently referenced to the satisfaction of the City Engineer. A set of approved field notes shall be furnished, or such work shall be suitably guaranteed, except where the setting of boundary monuments requires that other procedures be followed.
  - d. Make satisfactory arrangements with the Department of Transportation with respect to street name, warning, regulatory and guide signs.

- e. All grading done on private property outside the tract boundaries in connection with public improvements shall be performed within dedicated slope easements or by grants of satisfactory rights of entry by the affected property owners.
  - f. All improvements within public streets, private street, alleys and easements shall be constructed under permit in conformity with plans and specifications approved by the Bureau of Engineering.
  - g. Any required bonded sewer fees shall be paid prior to recordation of the final map or that the construction be suitably guaranteed.
- S-3. That the following improvements be either constructed prior to recordation of the final map or that the construction shall be suitably guaranteed:
- a. Construct on-site sewers to serve the tract as determined by the City Engineer.
  - b. Construct any necessary drainage facilities.
  - c. Construct new lights: one (1) on Santa Fe Avenue and two (2) on Mesquit Street. If street widening per BOE improvement conditions, relocate and upgrade street lights: three (3) on Jesse Street and one (1) on Mesquit Street.
  - d. Plant street trees and remove any existing trees within dedicated streets or proposed dedicated streets as required by the Urban Forestry Division of the Bureau of Street Services. Parkway tree removals shall be replanted at a 2: 1 ratio. All street tree plantings shall be brought up to current standards. When the City has previously been paid for tree plantings, the sub divider or contractor shall notify the Urban Forestry Division at: (213) 847-3077 upon completion of construction to expedite tree planting.
  - e. Repair or replace any off-grade or broken curb, gutter and sidewalk satisfactory to the City Engineer.
  - f. Construct access ramps for the handicapped as required by the City Engineer.
  - g. Close any unused driveways satisfactory to the City Engineer.
  - h. Construct any necessary additional street improvements to comply with the Americans with Disabilities Act (ADA) of 2010.
  - i. That the improvements required by the Bureau of Engineering Land Development Section will either be constructed prior to recordation of the final map or that the construction be suitably guaranteed:
    - a. Improve Santa Fe Avenue adjoining the subdivision by the construction of the following:
      - 1. A concrete curb, a concrete gutter, and a 15-foot concrete sidewalk with tree wells.
      - 2. Suitable surfacing to join the existing pavements and to complete a 28-foot half roadway.

3. Any necessary removal and reconstruction of existing improvements.
  4. The necessary transitions to join the existing improvements.
- b. Improve Jesse Street being dedicated and adjoining the subdivision by the repair and or replace any damaged, cracked or off-grade concrete curb, gutter, sidewalk, and roadway pavement including any necessary removal and reconstruction of existing improvements.
- c. Improve Mesquit Street adjoining the subdivision by the construction of the following:
1. A concrete curb, a concrete gutter, and a 10-foot concrete sidewalk with tree wells.
  2. Suitable surfacing to join the existing pavements and to complete a 23-foot half roadway.
  3. Any necessary removal and reconstruction of existing improvements.
  4. The necessary transitions to join the existing improvements.

## FINDINGS

### FINDINGS OF FACT (CEQA)

The Department of City Planning issued Mitigated Negative Declaration No. ENV-2020-6829-MND on September 23, 2021. The Department found that potential negative impact could occur from the project's implementation due to:

Tribal Cultural Resources and Transportation; and

The Deputy Advisory Agency certifies that Mitigated Negative Declaration No. ENV-2020-6829-MND reflects the independent judgment of the lead agency and determined that this project would not have a significant effect upon the environment provided the potential impacts identified above are mitigated to a less than significant level through implementation of Condition No. 27 of the Tract's approval. Other identified potential impacts not mitigated by these conditions are mandatorily subject to existing City ordinances, (Sewer Ordinance, Grading Ordinance, Flood Plain Management Specific Plan, Xeriscape Ordinance, Stormwater Ordinance, etc.) which are specifically intended to mitigate such potential impacts on all projects.

The project site, as well as the surrounding area are presently developed with structures and do not provide a natural habitat for either fish or wildlife.

In accordance with Section 21081.6 of the Public Resources Code (AB 3180), the Deputy Advisory Agency has assured that the above identified mitigation measures will be implemented by adopting the attached Mitigation Monitoring Program of ENV-2020-6829-MND.

### FINDINGS OF FACT (SUBDIVISION MAP ACT)

In connection with the approval of Vesting Tentative Tract Map No. 82388 the Advisory Agency of the City of Los Angeles, pursuant to Sections 66473.1, 66474.60, .61 and .63 of the State of California Government Code (the Subdivision Map Act), makes the prescribed findings as follows:

- (a) **THE PROPOSED MAP WILL BE/IS CONSISTENT WITH APPLICABLE GENERAL AND SPECIFIC PLANS.**

The property is zoned CR-1 and R4P-1 and is consistent with the existing land use designation. The subject property is comprised of five (5) parcels resulting in a through lot with 68,955 square feet of lot area including dedications with a depth of approximately 120 feet and having a frontage of approximately 244 linear feet along Mesquit Street and approximately 104 linear feet along Jesse Street.

The Vesting Tentative Tract Map describes and illustrates a land use consistent with the existing General Plan Land Use Designation of Heavy Manufacturing and M3 zoning of the site. The proposed use is permitted in the designated zones. The proposed project would remove the surface level parking lot pertaining to "Produce LA" on the subject site and would construct a 14-story, approximately 188,954 square foot commercial office building with 4,325 square feet of retail ground floor.

The project will provide a total of 397 parking spaces in five (5) levels of at-grade parking and two (2) levels of subterranean parking. The proposed development has provided an



addition 54 parking spaces to replace the parking spaces that were displaced from the former "Produce LA" surface parking lot. The project will also provide bicycle parking including 95 long term and 51 short-term. The applicant has filed a concurrent request for a Director of Planning Determination (Case No. CPC-2020-6828-GPA-ZC-HD-SPR-MCUP) for the following: (1) City-initiated General Plan Amendment ("GPA") to modify Footnotes 1 and 6 of the Central City North Community Plan to include the boundaries and development standards of the Project, pursuant to LAMC § 11.5.6.9; (2) Height District change from the existing Height District 1 to Height District 2, pursuant to LAMC § 12.32.F.; (3) Master Conditional Use Permit to permit the sale of full line alcoholic beverages within four restaurants and bars, pursuant to LAMC § 12.24 W.1. (4) Site Plan Review for a project that results in an increase of 50,000 gross square feet or more of nonresidential uses, pursuant to LAMC § 16.05.

Section 66411 of the Subdivision Map Act (Map Act) establishes that local agencies regulate and control the design of subdivisions. Chapter 2, Article I, of the Map Act establishes the general provisions for tentative, final, and parcel maps. The Vesting Tentative Tract Map was prepared by a Registered Professional Engineer and contains the required components, dimensions, areas, notes, legal description, ownership, applicant, and site address information as required by the Los Angeles Municipal Code ("LAMC"). The Vesting Tentative Tract Map is for the merger and subdivision of five (5) parcels into one (1) master ground lot and seven (7) airspace lots.

The Los Angeles Municipal Code (LAMC) implements the goals, objectives, and policies of the Community Plan through adopted zoning regulations. The Zoning Code regulates, but is not limited to, the maximum permitted density, height, and the subdivision of land. The Central City North Community Plan does not address subdivision explicitly, however, the plan does provide for land designations with the corresponding zone.

The subject property is M3 corresponding to Heavy Manufacturing land use designation and permits commercial uses on the property. The proposed office/commercial development is contingent upon approval of Case No. CPC-2020-6828-GPA-ZC-HD-SPR-MCUP.

Therefore, the Vesting Tentative Tract Map for the merger and subdivision of land to create an office/commercial development is allowable under the zone and the land use designation and will be consistent with the General and Community Plans and the request is consistent with Article 7 (Division of Land Regulations) of the Los Angeles Municipal Code. The project site is not governed by a specific plan.

(b) THE DESIGN AND IMPROVEMENT OF THE PROPOSED SUBDIVISION ARE CONSISTENT WITH APPLICABLE GENERAL AND SPECIFIC PLANS.

Pursuant to Section 66418 of the Subdivision Map Act, "design" of a map refers to street alignments, grades and widths; drainage and sanitary facilities and utilities, including alignments and grades thereof; location and size of all required easements and rights-of-way; fire roads and firebreaks; lot size and configuration; traffic access; grading; land to be dedicated for park or recreational purposes; and other such specific physical requirements in the plan and configuration of the entire subdivision as may be necessary to ensure consistency with, or implementation of, the general plan or any applicable specific plan. In addition, Section 66427 of the Subdivision Map Act expressly states that the "design and location of buildings are not part of the map review process for

condominium, community apartment or stock cooperative projects.” Section 17.05-C of the LAMC enumerates design standards for Subdivisions and requires that each subdivision map be designed in conformance with the Street Design Standards and in conformance to the General Plan.

Section 17.05-C, third paragraph, further establishes that density calculations include the areas for residential use and areas designated for public uses, except for land set aside for street purposes (“net area”). The requested map meets the required components of a Vesting Tentative Tract Map. The project is located within an Outside Flood Zone, Methane Zone, and Special Grading Area. The project is not located within a Liquefaction area and Landslide area.

The design and layout of the Vesting Tentative Tract Map are consistent with the design standards established by the Subdivision Map Act and Division of Land Regulations of the Los Angeles Municipal Code. Several public agencies (including Department of Building and Safety, Bureau of Engineering, and the Department of Water and Power) have reviewed the map and found the subdivision design satisfactory. These agencies have imposed improvement requirements and/or conditions of approval. Therefore, as conditioned, the design and improvements of the proposed subdivision are consistent with the applicable General and Specific Plans.

(c) THE SITE IS PHYSICALLY SUITABLE FOR THE PROPOSED TYPE OF DEVELOPMENT.

The subject property is comprised of five (5) parcels resulting in a through lot with 68,955 square feet of lot area dedications with a depth of approximately 120 feet and having a frontage of approximately 244 linear feet along Mesquit Street and approximately 104 linear feet along Jesse Street. The subject property is currently developed with a four (4)-story office/commercial building “Produce LA” and a surface level parking lot. The subject property is zoned M3-1-RIO within the Central City North Community Plan Area with a land use designation of Heavy Manufacturing.

Surrounding properties are developed with a mix of residential, commercial retail/restaurant and commercial office uses. Properties to the north adjoining the subject property are zoned PF-1XL-RIO with a land use designation of Public Facilities and developed with a Los Angeles Department of Water and Power substation facility. Properties to the east across Mesquit Street are zoned M3-1-RIO and OS-1XL-RIO with land use designations Heavy Manufacturing and Open Space and developed with warehouse uses, a railyard and Los Angeles River located behind the warehouses. Properties to the south across Jesse Street are zoned M3-1-RIO with a land use designation of Heavy Manufacturing and developed with live/work and community serving multi-story developments. Properties to the west across Santa Fe Avenue are zoned M3-1-RIO with a land use designation of Heavy Manufacturing and developed with multi-story office commercial uses with surface level parking lots.

Removal of trees on-site and street trees through the development of the proposed project will be replaced as per the requirements of the Bureau of Street Services, Urban Forestry Division. The proposed development is an allowable use under the M3 Zone and the pending a City-initiated General Plan Amendment (“GPA”) to modify Footnotes 1 and 6 of the Central City North Community Plan to include the boundaries and development standards of the Project. The proposed 14-story, approximately 188,954 square foot

commercial office building with 4,325 square feet of retail ground floor, including a total of 397 parking spaces in five (5) levels of at-grade parking and two (2) levels of subterranean parking is contingent upon approval of Case No. CPC-2020-6828-GPA-ZC-HD-SPR-MCUP. In addition, the site is not located within an Alquist-Priolo Fault Zone, however it is located within an Outside Flood Zone. The Department of Building and Safety, Grading Division, will require that the project satisfy the requirement of the City's Grading Regulations as enumerated in Section 91.3000 of the Los Angeles Municipal Code. Therefore, material evidence supports that the site will be physically suitable for the proposed type of development.

(d) THE SITE IS PHYSICALLY SUITABLE FOR THE PROPOSED DENSITY OF DEVELOPMENT.

The General Plan identifies geographic locations where planned and anticipated densities are permitted through its Community Plans and Specific Plans. Zoning relating to the sites throughout the city, are allocated based on the type of land use, physical suitability and future population growth expected to occur. The Central City North Community Plan designates the site for Heavy Manufacturing land uses. The site is zoned M3 and is consistent with the range of zones under the corresponding land use designation. The proposed commercial/office development is contingent upon approval of Case No. CPC-2020-6828-GPA-ZC-HD-SPR-MCUP. As such, the construction of the proposed uses on the project site would be consistent with the land use designation of the site and the applicable zoning of the site.

Surrounding properties are developed with a mix of residential, commercial retail/restaurant and commercial office uses. Properties to the north adjoining the subject property are zoned PF-1XL-RIO with a land use designation of Public Facilities and developed with a Los Angeles Department of Water and Power substation facility. Properties to the east across Mesquit Street are zoned M3-1-RIO and OS-1XL-RIO with land use designations Heavy Manufacturing and Open Space and developed with warehouse uses, a railyard and Los Angeles River located behind the warehouses. Properties to the south across Jesse Street are zoned M3-1-RIO with a land use designation of Heavy Manufacturing and developed with live/work and community serving multi-story developments. Properties to the west across Santa Fe Avenue are zoned M3-1-RIO with a land use designation of Heavy Manufacturing and developed with multi-story office commercial uses with surface level parking lots.

Based on the density calculation and land uses in the vicinity, this subdivision involves a density consistent with the General Plan and Zoning affecting the site, as approved by Case No. CPC-2020-6828-GPA-ZC-HD-SPR-MCUP. There are no known physical impediments or hazards that would be materially detrimental to the public welfare or injurious to the property or improvements in the same zone or vicinity in which the property is located as a result of the project's proposed density. Therefore, the site is physically suitable for the proposed density of development.

(e) THE DESIGN OF THE SUBDIVISION AND THE PROPOSED IMPROVEMENTS ARE NOT LIKELY TO CAUSE SUBSTANTIAL ENVIRONMENTAL DAMAGE OR SUBSTANTIALLY AND AVOIDABLY INJURE FISH OR WILDLIFE OR THEIR HABITAT.

The project site, as well as the surrounding area, is developed with structures and no identified fish, wildlife, or established habitat is located on-site. As such, the proposed

design of the subdivision and the proposed improvements are not anticipated to cause any substantial damage or substantially and avoidably injure fish or wildlife or their habitat.

The subject site is located in a developed area of the City of Los Angeles and therefore, the design of the subdivision and the proposed improvements will not cause substantial environmental damage or avoidably injury to fish or wildlife or their habitat.

- (f) THE DESIGN OF THE SUBDIVISION AND THE PROPOSED IMPROVEMENTS ARE NOT LIKELY TO CAUSE SERIOUS PUBLIC HEALTH PROBLEMS.

The proposed subdivision, and subsequent improvements, are subject to the provisions of the Los Angeles Municipal Code (e.g., the Fire Code, Planning and Zoning Code, Health and Safety Code) and the Building Code. Other health and safety related requirements, as mandated by law, would apply where applicable to ensure the public health and welfare (e.g., asbestos abatement, seismic safety, flood hazard management).

The project is not located on a hazardous materials site and/or on a site having unsuitable soil conditions, however the project is located within an Outside Flood Zone. The project would not place any occupants or residents near a hazardous materials site or involve the use or transport of hazardous materials or substances.

The area surrounding the property is fully developed with similar uses indicating that sewers and other services are available. Additionally, the project has been determined to be statutorily exemption from CEQA which indicates that no adverse impacts to the public health or safety would occur as a result of the design and improvements are not likely to cause serious public health problems.

- (g) THE DESIGN OF THE SUBDIVISION AND THE PROPOSED IMPROVEMENTS WILL NOT CONFLICT WITH EASEMENTS ACQUIRED BY THE PUBLIC AT LARGE FOR ACCESS THROUGH OR USE OF PROPERTY WITHIN THE PROPOSED SUBDIVISION.

There are no recorded instruments identifying easements encumbering the project site for the purpose of providing public access. The project site contains legally recorded lots identified by the Assessor Parcel Map No. 5164015022. The site is surrounded by private properties that adjoin improved public streets and sidewalks designed and improved to the specific requirements of the Los Angeles Municipal Code for providing public access throughout the area. The project site does not adjoin or provide access to a public resource, natural habitat, public park, or any officially recognized public recreation area. Needed public access for roads and utilities will be acquired by the City prior to the recordation of the proposed tract map.

Therefore, the design of the subdivision and the proposed improvements would not conflict with easements acquired by the public at-large for access through or use of the property within the proposed subdivision.

- (h) THE DESIGN OF THE PROPOSED SUBDIVISION WILL PROVIDE, TO THE EXTENT FEASIBLE, FOR FUTURE PASSIVE OR NATURAL HEATING OR COOLING OPPORTUNITIES IN THE SUBDIVISION. (REF. SECTION 66473.1)

In assessing the feasibility of passive or natural heating or cooling opportunities in the proposed subdivision design, the applicant has prepared and submitted materials which consider the local climate, contours, configuration of the parcels to be subdivided and other design and improvement requirements.

Providing for passive or natural heating or cooling opportunities will not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or structure under applicable planning and zoning in effect at the time the tentative map was filed.

The lot layout of the subdivision has taken into consideration the maximizing of the north/south orientation.

The topography of the site has been considered in the maximization of passive or natural heating and cooling opportunities.

In addition, prior to obtaining a building permit, the subdivider shall consider building construction techniques, such as overhanging eaves, location of windows, insulation, exhaust fans; planting of trees for shade purposes and the height of the buildings on the site in relation to adjacent development.

These findings shall apply to both the tentative and final maps for Vesting Tentative Tract Map No. 83288-1A

# COVID-19 UPDATE

## Interim Appeal Filing Procedures

Fall 2020



Consistent with Mayor Eric Garcetti's "Safer At Home" directives to help slow the spread of COVID-19, City Planning has implemented new procedures for the filing of appeals for non-applicants that eliminate or minimize in-person interaction.

### OPTION 1: Online Appeal Portal

([planning.lacity.org/development-services/appeal-application-online](http://planning.lacity.org/development-services/appeal-application-online))

Entitlement and CEQA appeals can be submitted online and payment can be made by credit card or e-check. The online appeal portal allows appellants to fill out and submit the appeal application directly to the Development Services Center (DSC). Once the appeal is accepted, the portal allows for appellants to submit a credit card payment, enabling the appeal and payment to be submitted entirely electronically. A 2.7% credit card processing service fee will be charged - there is no charge for paying online by e-check.

**Appeals should be filed early to ensure DSC staff has adequate time to review and accept the documents, and to allow Appellants time to submit payment.** On the final day to file an appeal, the application must be submitted and paid for by 4:30PM (PT). Should the final day fall on a weekend or legal holiday, the time for filing an appeal shall be extended to 4:30PM (PT) on the next succeeding working day. Building and Safety appeals (LAMC Section 12.26K) can only be filed using Option 2 below.

### OPTION 2: Drop off at DSC

An appellant may continue to submit an appeal application and payment at any of the three Development Services Center (DSC) locations. City Planning established drop off areas at the DSCs with physical boxes where appellants can drop.

#### **Metro DSC**

(213) 482-7077  
201 N. Figueroa Street  
Los Angeles, CA 90012

#### **Van Nuys DSC**

(818) 374-5050  
6262 Van Nuys Boulevard  
Van Nuys, CA 91401

#### **West Los Angeles DSC**

(310) 231-2901  
1828 Sawtelle Boulevard  
West Los Angeles, CA 90025

City Planning staff will follow up with the Appellant via email and/or phone to:

- Confirm that the appeal package is complete and meets the applicable LAMC provisions
- Provide a receipt for payment