



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: ZA-2021-9890-ZV-1A; ENV-2017-4735-MND

Project Address: 719 - 725 E. 5th

Final Date to Appeal: 09/19/2022

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 Boulevard Suite 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 Boulevard Suite 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: _____

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: 09/16/2022

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 COMMUNITES (TOC)

1. Density Bonus/TOC

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

NOTE:

- Density Bonus/TOC cases, only the *on menu or additional incentives* items can be appealed.
- Appeals of Density Bonus/TOC cases can only be filed by adjacent owners or tenants (must have documentation), and always only appealable to the Citywide Planning Commission.
- ☐ Provide documentation to confirm adjacent owner or tenant status, i.e., a lease agreement, rent receipt, utility bill, property tax bill, ZIMAS, drivers license, bill statement etc.

D. WAIVER OF DEDICATION AND OR IMPROVEMENT

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

NOTE:

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

E. TENTATIVE TRACT/VESTING

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

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

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

F. BUILDING AND SAFETY DETERMINATION

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

a. Appeal Fee

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

b. Notice Requirement

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

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

a. Appeal Fee

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

b. Notice Requirement

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

G. NUISANCE ABATEMENT

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

NOTE:

- Nuisance Abatement is only appealable to the City Council.

a. Appeal Fee

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

2. Plan Approval/Compliance Review

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

a. Appeal Fee

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

NOTES

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

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

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



Scan this QR Code® with a barcode reading app on your Smartphone. Bookmark page for future reference.



City Planning Request

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

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

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

Receipt Number:190922O2C-1A74FE61-CA6B-4E95-8A51-2ADADF03FD10, Amount:\$194.34, Paid Date:09/19/2022

Applicant: ADAMS BROADWELL JOSEPH & CARDOZO - KEY, DARIEN (650-5891660)
Representative:
Project Address: 721 E 5TH ST, 90013

NOTES: APPEAL OF THE ENTIRE ACTION ZA-2021-9890-ZV BY AN AGGRIEVED PERSON(S) [CREEDLA], OTHER THAN THE APPLICANT/OWNER, CLAIMING TO BE AGGRIEVED.

ZA-2021-9890-ZV-2A			
Item	Fee	%	Charged Fee
Appeal by Person Other Than The Applicant *	\$158.00	100%	\$158.00
Case Total			\$158.00

Item	Charged Fee
*Fees Subject to Surcharges	\$158.00
Fees Not Subject to Surcharges	\$0.00
Plan & Land Use Fees Total	\$158.00
Expediting Fee	\$0.00
Development Services Center Surcharge (3%)	\$4.74
City Planning Systems Development Surcharge (6%)	\$9.48
Operating Surcharge (7%)	\$11.06
General Plan Maintenance Surcharge (7%)	\$11.06
Grand Total	\$194.34
Total Invoice	\$194.34
Total Overpayment Amount	\$0.00
Total Paid (this amount must equal the sum of all checks)	\$194.34

Council District: 9
Plan Area: Central City
Processed by MCCOY, NOAH on 09/19/2022

Signature: _____

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

TEL: (650) 589-1660
FAX: (650) 589-5062
dkey@adamsbroadwell.com

SACRAMENTO OFFICE

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

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

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

September 16, 2022

Via Online Submission

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

Via Email Only

Oliver Netburn, City Planner
Los Angeles City Planning Department
200 N. Spring St., Room 763
Los Angeles, CA 90012
Email: oliver.netburn@lacity.org

Re: Appeal to the Los Angeles City Council from City Planning Commission August 30, 2022 Letters of Determination Regarding the Rendon Hotel Project: (1) Case No. CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZAA-ZV-RDP-SPR CEQA: ENV-2017-4735-MND; and (2) Case No. ZA-2021-9890-ZV-1A; ENV-2017-4735-MND

Dear City Council Members, Mr. Netburn:

On behalf of the Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA") we are writing to appeal all actions identified the August 30, 2022 Letters of Determination issued by the City Planning Commission ("CPC") following its April 28, 2022 hearings regarding the Rendon Hotel Project ("Project"), including:

- (1) Case No. CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZAA-ZV-RDP-SPR CEQA: ENV-2017-4735-MND (2053 – 2059 East 7th Street) ("CPC-2017 LOD")
- (2) Case No. ZA-2021-9890-ZV-1A; ENV-2017-4735-MND (719 – 725 East 5th Street) ("ZA-2021 LOD," or collectively, "LODs").

The CPC-2017 LOD reflects the following CPC actions:

1. Adopted the Project's MND and Mitigation Monitoring Program pursuant to CEQA;
2. Approved and Recommended, that the Mayor and the City Council adopt, pursuant to Charter Sections 555, 556, and 558 and Section 11.5.6 of the Los Angeles Municipal Code (LAMC), a General Plan Amendment to the Central City North Community Plan to change the Community Plan land use designation from Heavy Manufacturing to Regional Center Commercial for the subject property;
3. Approved and Recommended, that the City Council adopt, pursuant to LAMC Sections 12.32 D and 12.32 Q, a Zone and Height District Change from M3-1-RIO to (T)(Q)C2-2-RIO Zone;
4. Approved, pursuant to LAMC Section 12.24 W.1, a Conditional Use Permit;
5. Approved, pursuant to LAMC Section 12.24 W.18, a Conditional Use Permit to permit public dancing in conjunction with the operation of restaurants and/or bars in the C2 Zone;
6. Approved, pursuant to LAMC Section 12.27, a Variance from LAMC Section 12.21 A.4 to allow zero on-site parking spaces in lieu of 56 required parking spaces;
7. Approved, pursuant to LAMC Section 12.28 A, a Zoning Administrator's Adjustment;
8. Approved, pursuant to LAMC Section 11.5.14, a Redevelopment Plan Project Compliance Review for development activity involving a Residential Hotel/Single Room Occupancy Hotel (SRO);
9. Approved, pursuant to LAMC Section 16.50, a Site Plan Review for a proposed hotel containing more than 50 guest rooms;
10. Adopted Modified Conditions of Approval; and
11. Adopted Findings.

The ZA-2021 LOD reflects the following CPC actions:

1. Adopted the Project's MND and Mitigation Monitoring Program pursuant to CEQA;
2. Denied the appeals in part and granted the appeals in part, sustained the Zoning Administrator's Determination dated March 17, 2022;
3. Approved, pursuant to Section 12.27 of the Los Angeles Municipal Code, a Zone Variance from LAMC Section 12.21 A.4 to allow an apartment hotel use with 42 rooms in the M2-2D Zone;
4. Adopted Modified Conditions of Approval; and
5. Adopted Amended Findings.

The CPC's April 28, 2022 determinations upheld the March 17, 2022 Zoning Administrator's approval of the Project's Mitigated Negative Declaration ("MND"), including the March 2022 Errata to the MND ("Errata", collectively "MND" or "Revised MND"), and Zoning Variance for the Rendon Hotel Project, proposed to be located at 2053 - 2059 East 7th Street (Rendon Hotel) and 719 - 725 E. 5th (El Sol Hotel).

The Zoning Administrator issued the original approvals without a public hearing. On March 31, 2022, CREED LA appealed the Zoning Administrator's decision to the CPC. At the April 28, 2022 hearing on CREED LA's appeal, the CPC upheld the Zoning Administrator's decisions. The CPC also took separate action to approve recommendations for a General Plan Amendment, a Height and Zone change, and to outright approve two Conditional Use permits, a Zoning Variance, a Compliance Review, and a Site Plan Review for the Project. The CPC issued LODs related to each action on August 30, 2022. CREED LA herein appeals both LODs.

I. PROJECT AND PROCEDURAL BACKGROUND

The original project, proposed by Rendon, LLC (the "Applicant"), proposed a one-story addition to an existing three-story hotel and the construction, use, and maintenance of an attached 15-story hotel building with 103 guest rooms and approximately 15,907 square feet of commercial space comprised of an art gallery, café, restaurant, and bar uses.¹

The Revised MND includes an entirely separate building with an expansion of the Project to add 42 new single room occupancy apartment units ("SROs") at an off-site location at 719-725 East 5th Street, the El Sol Hotel building.² Addition of the SROs will expand the Project's footprint and requires additional interior construction activities to renovate the SROs in the El Sol Hotel building.³ In addition to substantially altering the Project description, the Revised MND acknowledges that the proposed expansion of the Project will result in increased environmental impacts that were not considered in the original MND, including additional construction and operational air emissions, energy impacts, noise impacts, increased greenhouse gas ("GHG") emissions, hazardous materials, transportation, and utilities and public services.⁴ The Revised MND includes new qualitative and quantitative analyses of each of these impacts which were not included in the original MND.

¹ MND p.1, 8.

² Revised MND, p. 12.

³ Revised MND, p. 13.

⁴ Revised MND, pp. 12-27.

Rather than prepare and circulate an environmental impact report (“EIR”) for the revised Project, or revise and recirculate the MND for additional public comment pursuant to the California Environmental Quality Act (“CEQA”), the City illegally labelled the Revised MND as an “Errata” and failed to circulate it for public review before the Zoning Administrator approved it. This was a clear violation of CEQA’s requirements that a project’s potentially significant impacts must be analyzed in an EIR, and that any substantive changes to a previously circulated CEQA document require recirculation pursuant to CEQA.⁵ The Revised MND and LODs also fail to acknowledge or respond to CREED LA’s comments and expert comments on the original MND, or the MND comments of any other members of the public, demonstrating that the Zoning Administrator failed to consider these comments before adopting the Revised MND and approving a portion of the Project, in further violation of CEQA.⁶

The City also failed to hold a public hearing before approving the Zoning Variance, in violation of the City’s municipal code. LAMC Section 12.27 requires the Zoning Administrator to hold a public hearing on an application for a zoning variance unless there is substantial evidence in the record demonstrating that the project (i) will not have a significant effect on adjoining properties or on the immediate neighborhood, and (ii) is not likely to evoke public controversy.⁷ CREED LA’s MND comments of March 3, 2021 and September 23, 2021 included expert comments which provided substantial evidence supporting a fair argument that the original Project would have significant, adverse air quality, noise, and health risk impacts on the immediate neighborhood of the Project, thus meeting the first criteria for a public hearing on the Zoning Variance.

The Revised MND failed to respond to or mitigate these impacts, and failed to adequately analyze impacts associated with the expansion of the Project, and therefore lacks substantial evidence demonstrating that the Revised Project will not have significant effects on adjoining properties or the surrounding neighborhood. The fact that CREED LA and other members of the public filed comments identifying deficiencies in the MND and asking the City to prepare an EIR for the Project also demonstrates that the Project “evokes public controversy,” thus meeting the second criteria for a public hearing on the Zoning Variance.

⁵ See Pub. Resources Code, §§ 21100; 21080 (d), 21082.2, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15064, subds. (f)(1), (h)(1), 15088.5, 15073.5; *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123 (*Laurel Heights II*); *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 (*Quail Botanical*).

⁶ CEQA Guidelines, § 15074(b).

⁷ LAMC Section 12.27(C)(i), (ii).

The City did not meaningfully respond to CREED LA's MND comments, has not prepared an EIR for the Project, and has not corrected any of the errors and omissions in the original MND. Therefore, the City has not complied with CEQA and the public controversy remains ongoing.

II. REASONS FOR APPEAL

CREED LA appeals all actions taken by the CPC on April 28, 2022 as described in the LODs dated August 30, 2022. The reasons for this appeal are set forth in the attached comments and exhibits, including CREED LA's MND comment letter dated March 3, 2021, as well as supplemental comments of September 23, 2021, CREED LA's appeal of March 31, 2022, and supplemental comments to the CPC dated April 18, 2022 and April 25, 2022.⁸

Pursuant to City appeal procedures, we have provided an electronic copy of this Justification for Appeal letter, the Appeal Applications (form CP-7769), and the original Determination Letters. We have also paid the required appeal fee via the Department of City Planning Online Application Portal. We incorporate by reference all comments included in Exhibit 1 through 5. CREED LA respectfully requests that the City Council consider all of our comments on the Project in their entirety in responding to this appeal. We reserve the right to supplement this appeal at later hearings and proceedings related to the Project.⁹

Reasons for the appeal include violations of CEQA and State and local land use codes, including that the CPC abused its discretion and violated CEQA by (1) denying CREED LA's appeal of the Zoning Administrator's approval of a Zone Variance and the Project's Revised MND without a public hearing, and (2) recommending approval of the Project's other entitlements in reliance on a legally invalid CEQA document. CEQA requires that the potential impacts of the Project be evaluated in an EIR, not in an MND, because substantial evidence exists that the Project may have significant, unmitigated environmental impacts to air quality

⁸ See **Exhibit 1**: Letter from Darien Key to Oliver Netburn re: Comments on the Initial Study/Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR, March 3, 2021; **See Exhibit 2**: Letter from Darien Key to Oliver Netburn re: Comments on the Initial Study/Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR, September 23, 2021; **Exhibit 3**: March 31, 2022 Appeal; **Exhibit 4**: April 18, 2022 comments; **Exhibit 5**: April 25, 2022 comments.

⁹ 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

and public health, from GHG emissions and noise, and on transportation. The CPC's actions failed to comply with CEQA.

The CPC conducted two hearings on the Project on April 28, 2022, at which the CPC (1) considered CREED LA's appeal, and (2) considered the Project's remaining approvals. The CPC denied CREED LA's appeal, and recommended approval of the General Plan Amendment, Height and Zone change, two Conditional Use permits, Zoning Variance, Compliance Review, and Site Plan Review.

CREED LA's appeal of the Zoning Administrator decision should have been upheld by the CPC because the Zoning Administrator lacked the authority to approve the MND and the Zoning variance on March 17, 2022 and violated the due process rights of CREED LA and other members of the Project by adopting the Revised MND and approving a portion of the Project without a public hearing. The Zoning Administrator lacked the authority because: (1) the approval of the Zoning Variance and Revised MND under a separate project from the Rendon Hotel violated CEQA, was premature and resulted in piecemealing of the approvals for a single project; (2) the City failed to consider our March 3, 2021 and September 23, 2021 comments regarding the MND, thus violating CEQA Guidelines Section 15074(b); (3) the "Errata" fails to conform to the requirements of CEQA Guidelines Section 15073.5 which necessitated, at a minimum, recirculation of the original MND for additional public comment on the new information and evidence addressing the environmental impacts of the Revised Project; (4) approval of the Zoning Variance resulted in premature approvals which are not allowed under CEQA and *Save Tara*, and (5) approval of the Zoning Variance without a public hearing was a due process violation.

The CPC's decision to recommend approval of the Project's remaining entitlements without preparing an EIR for the Project violated CEQA and resulted in a deficient record which did not support the findings made by the CPC to recommend approval of the Project's legislative entitlements.

The record contains substantial evidence supporting a fair argument that that Project will cause: (1) significant, unmitigated cancer risk from toxic air contaminant emissions, (2) potentially significant, unmitigated impacts from GHG emissions, (3) significant, unmitigated impacts from noise, (4) significant, unmitigated impacts on transportation, and (5) significant unmitigated cumulative impacts. These impacts will be further compounded and exacerbated by the renovation of the El Sol Hotel, as described in the Errata. The City must remedy

September 16, 2022
Page 7

these errors by preparing a single EIR for the Project before the City Council can consider it for approval.

III. CONCLUSION

As a result of the errors described herein and in our attached comments, the CPC's actions resulted in violations of CEQA and land use laws, and must be overturned. CREED LA urges the City Council to grant these Appeals, and to remand the Project to Staff to prepare a single, legally adequate EIR for the entire Project.

Thank you for your attention to this important matter.

Sincerely,

Darien Key

Attachments
DKK:acp

EXHIBIT 1

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

TEL: (650) 589-1660
FAX: (650) 589-5062
dkey@adamsbroadwell.com

SACRAMENTO OFFICE

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

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

DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
WILLIAM C. MUMBY

MARC D. JOSEPH
Of Counsel

March 3, 2021

*Not admitted in California.
Licensed in Colorado.

VIA EMAIL AND OVERNIGHT MAIL

Oliver Netburn, City Planner
Department of City Planning
City of Los Angeles
200 North Main Street, Room 763
Los Angeles CA 90012
Email: oliver.netburn@lacity.org

Re: Comments on the Initial Study / Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR

Dear Mr. Netburn:

We write on behalf of the Coalition for Responsible Equitable Economic Development ("CREED LA") to provide comments on the Initial Study and Mitigated Negative Declaration ("MND") prepared by the City of Los Angeles ("City") for the Rendon Hotel Project ENV-2017-4735-MND CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR ("Project"), The Rendon, LLC (the "Applicant") proposes a one-story addition to an existing three-story hotel and the construction, use, and maintenance of an attached 15-story hotel building with 103 guest rooms and approximately 15,907 square feet of commercial space comprised of an art gallery, café, restaurant, and bar uses.¹

The Project site is comprised of two contiguous parcels in the City of Los Angeles, on the northwest corner of East 7th Street and Santa Fe Avenue. The existing three-story, 14,910 square-foot hotel building on the Project Site would remain and would undergo structural alterations, tenant improvements, and a one-story addition, resulting in a four-story building. In total, the Proposed Project

¹ MND p.8.
5078-001acp

would include 67,615 square feet of floor area, resulting in a floor area ratio of 6:1. The 15-story hotel addition would reach a maximum height of 172'-5" above grade. One subterranean level would be provided to include mechanical equipment, storage, bicycle parking, and service areas. Parking would be provided off-site through a private agreement. A valet drop-off area would be located along Santa Fe Avenue, adjacent to the Project Site. Additionally, the Proposed Project would be consistent with the applicable requirements of the LAMC for bicycle parking spaces.²

Based upon our review of the MND and supporting documentation, we conclude that the MND fails to comply with the requirements of the California Environmental Quality Act³ ("CEQA"). The MND fails to accurately describe the Project. Additionally, it fails to analyze all required air quality, land use, parking, water, and noise issues. Lastly, it fails to identify the Project's potentially significant environmental impacts and fails to propose enforceable mitigation measures.

As explained in these comments, there is more than a fair argument that the Project will result in potentially significant impacts relating to air quality, public health, energy, greenhouse gas emissions, hazards, noise, and transportation. The City may not approve the Project until it prepares an environmental impact report ("EIR") that adequately analyzes the Project's potentially significant direct, indirect, and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts.

We prepared these comments with the assistance of environmental health, air quality, and greenhouse gas ("GHG") expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise ("SWAPE") and acoustics expert Neil A. Shaw, FASA, FAES. SWAPE's technical comments and curricula vitae are attached as **Attachment A**.⁴ Mr. Shaw's technical comments and curriculum vitae are attached as **Attachment B**.⁵ The attached expert comments require separate responses under CEQA.⁶ We

² *Id.*

³ Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").

⁴ **Attachment A**: Letter from M. Hagemann and P. Rosenfeld (SWAPE) re *Comments on Rendon Hotel Project (Case Number: ENV-2017-4735-MND)* (February 25, 2021) ("SWAPE Comments").

⁵ **Attachment B**: Letter from Neil A. Shaw re *2053 – 2058 East 7th Street, Los Angeles Project ENV-2017-4735-MND and Appendix F - Noise Impact Review* (March 2, 2021) ("Shaw Comments").

⁶ 14 CCR § 15088(a), (c).
5078-001acp

reserve the right to supplement these comments at later hearings and proceedings related to the Project.⁷

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 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, 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 on site.

Also, 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 businesses and industries 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.

II. AN EIR IS REQUIRED

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.⁸ "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions

⁷ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

⁸ See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.
5078-001acp

before they are made. Thus, the EIR protects not only the environment but also informed self-government.”⁹ 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.”¹⁰

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.¹¹ 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.¹²

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 record before the public agency that the project, as revised, *may* have a significant effect on the environment.¹³

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

⁹ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (*Goletta Valley*), internal citations omitted.

¹⁰ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹¹ See Pub. Resources Code, § 21100.

¹² Pub. Resources Code, §§ 21080, subd. (d), 21082.2, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15064, subds. (f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123 (*Laurel Heights II*); *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 (*Quail Botanical*).

¹³ Pub. Resources Code, § 21064.5 (emphasis added).
5078-001acp

of an EIR.”¹⁴ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.¹⁵ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.¹⁶

“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.”¹⁷ According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles outlined 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.”¹⁸ Deferring formulation of mitigation measures to post-approval studies is generally impermissible.¹⁹ Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.²⁰ If the identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further

¹⁴ See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

¹⁵ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

¹⁶ *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 (*Friends of B Street*) (“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”).

¹⁷ CEQA Guidelines, § 15384, subd. (a).

¹⁸ CEQA Guidelines, § 15126.4, subd. (a)(2).

¹⁹ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.

²⁰ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical*, *supra*, 29 Cal.App.4th at p. 1604, fn. 5.

5078-001acp

approvals must be made contingent upon meeting these performance criteria.²¹ 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.²²

Concerning 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.²³ 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.

III. THE MND FAILS TO PROVIDE AN ACCURATE AND COMPLETE PROJECT DESCRIPTION

An accurate and complete project description is necessary to evaluate the potential environmental effects of a proposed project.²⁴ Without a complete project description, the environmental analysis will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.²⁵ The courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."²⁶ Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs.²⁷

²¹ *Ibid.*

²² *Ibid.*

²³ Pub. Resources Code, § 21064.5.

²⁴ See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

²⁵ See *ibid.*

²⁶ *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

²⁷ *Id.* at pp. 192-193.

5078-001acp

A. The MND Fails to Adequately Describe the Project's Water Usage

The MND fails to include a complete and accurate description of the Project's water use. The MND fails to describe the amount of water that will be used during the Project's 18-month construction period and fails to provide supporting evidence that the amount of water required for construction (whatever that may be) is available from LADWP or other service providers.²⁸ The MND states that the "Project would generate an increase in water demand of approximately 22,244 gallons per day (gpd) of water (or approximately 25-acre feet per year), which is significantly below available capacity."²⁹ However, this calculation only includes *operational* water use (hotel rooms, restaurant, etc.) and does not include water use during the construction or any estimate regarding what amount would be needed during construction.

B. The MND Fails to Adequately Describe the Project's Offsite Parking Agreement

All discussions in the MND related to the Project's proposed off-site parking are extremely short, vague, and lacking detail regarding EV spots and applicable carpool or vanpool areas.³⁰ The Applicant has not provided any details of where this parking would be, how employee parking will be handled, and the viability of obtaining said agreement.³¹

C. The MND Fails to Adequately Describe the Project's Activities that May Result in Significant Noise Impacts

The MND's noise section fails to discuss a variety of facets that may result in significant noise impacts. The MND states that requests for permits for the sale and consumption of alcohol and for dancing on the premises are anticipated.³² However, descriptions of the accompanying activities, such as live or recorded music, are not included in the MND's discussion of potentially significant noise impacts.³³ The MND further fails to disclose whether the Project anticipates the use of sound systems on the rooftop, alcohol use on the rooftop, and where said dancing would

²⁸ MND. Pp.62-63; MND Section XIX (Utilities), pp. 183-185, and pp. 188-189

²⁹ MND Section XIX (Utilities), pp. 183-185, and pp. 188-189

³⁰ MND, pp. 133-134.

³¹ *Id.*

³² MND p. 12; See Shaw Comment letter p.1.

³³ MND p. 12 compared to MND pp. 136-152; See Shaw Comment letter p.1.

5078-001acp

occur, thus failing to describe the facts necessary to determine whether the Project will result in a potentially significant operational noise impact.³⁴

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.

IV. THE MND FAILS TO ANALYZE IMPACTS UNDER CEQA

A. The MND Fails to Analyze Hydrology and Water Quality and Utilities Impacts Due to Water Usage during the Construction of the Project.

First, the MND could have an impact on existing infrastructure and require upgrades since LADWP did not have adequate information to comment on any impact due to lack of information on fire and domestic water needs from the Applicant.³⁵ The MND does not address the Project's fire and domestic water needs, and it is unclear whether the Applicant ever obtained this information and provided it to LADWP to confirm that no upgrades would be necessary.³⁶

The MND then states that "no further upgrades are anticipated at this time" which is true that no upgrades are anticipated but that is because the analysis does not contain all the necessary information for LADWP to provide a full analysis, and therefore determine whether upgrades would be necessary. The failure to provide the necessary information to LADWP results in a flawed, and somewhat premature, conclusion that "potential impacts resulting from water infrastructure improvements would be less than significant."³⁷

Second, the Air Quality construction emissions analysis hinges on a variety of fugitive dust control measures related to wetting the soil during construction.³⁸ Yet, the MND fails to describe the amount of water necessary to comply with these measures and what these measures would do to the quality of the water used.³⁹ The Applicant must provide this basic information so the public and decision-makers

³⁴ See Shaw Comment letter p.1-4.

³⁵ MND, Appendix H p. 10, LADWP Letter regarding Water Needs Question 7.

³⁶ *Id.*

³⁷ MND, p. 185.

³⁸ MND, pp. 62-63.

³⁹ MND, p. 117.

5078-001acp

can meaningfully assess the Project's potential impacts. Further, without this information, there is no support for the Applicant's conclusion that the Project's impacts on Hydrology and Water Quality are less than significant.⁴⁰

B. The MND Fails to Adequately Analyze Noise Impacts

First, as Mr. Shaw explains, noise from boisterous patrons, fueled by alcohol and music being played at the rooftop lounge area will likely have an impact on the residences next to the Project site, and "[t]herefore, the MND's declaration of "no impact" is not supported. It is likely that the Project will result in significant, unmitigated operational noise impacts."

Second, due to the deficiencies above, it is necessary to establish an accurate existing baseline to estimate noise impacts as accurately as possible. The MND fails to provide an accurate description of existing noise conditions because it uses imprecise and inadequate methods to establish a baseline. Any analysis that follows in the MND is therefore flawed.⁴¹

For example, MND Table 4.13, Estimated Exterior Construction Noise at Nearest Sensitive Receptors Without Mitigation, presents data from 15-minute mid-day noise measurements taken at the Project site on one day. Absent from the MND or its analyses are details critical to support its conclusions regarding the existing baseline at the Project site. No description of the environmental conditions in the vicinity, such as the current or former presence of construction and other activities near the measurement locations or other environmental conditions such as wind that could affect the noise baseline measurements are disclosed. There is no statement to the effect "[a]ll equipment is under current calibration, copies of which are available on request" and so the accuracy of the measurements is open to question. Nor is the software used to process, analyze, and present the data disclosed.⁴²

Without this information, the City is unable to determine whether the increase in ambient noise levels caused by Project construction and operation would be significant, as called for by CEQA.⁴³

⁴⁰ MND, p. 117.

⁴¹ Shaw comment letter, pp. 4.

⁴² Shaw comment letter, pp. 4.

⁴³ Shaw comment letter, pp. 4.

5078-001acp

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.⁴⁴

V. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS THAT REQUIRE THE CITY TO PREPARE AN EIR

Under CEQA, a lead agency must 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.⁴⁵ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.⁴⁶ An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁴⁷ Substantial evidence can be provided by technical experts or members of the public.⁴⁸ “If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.”⁴⁹

As discussed below, there is a fair argument supported by substantial evidence that the Project may result in significant impacts relating to air quality, public health, energy, greenhouse gas emissions, hazards, noise, and

⁴⁴ MND pp. 136-152.

⁴⁵ Pub. Resources Code, § 21082.2; CEQA Guidelines, § 15064, subds. (f), (h); *Laurel Heights II*, *supra*, 6 Cal. 4th at p. 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*, *supra*, 29 Cal.App.4th at pp. 1601-1602.

⁴⁶ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁴⁷ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; *see also Friends of B Street*, *supra*, 106 Cal.App.3d at p. 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 [environmental impact report] and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

⁴⁸ *See, e.g., Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 (substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy); *see also Architectural Heritage Assn. v. County of Monterey*, 122 Cal.App.4th 1095, 1117-1118 (substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing); *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

⁴⁹ CEQA Guidelines, § 15062, subd. (f).
5078-001acp

transportation. The City is required to prepare an EIR to evaluate the Project's impacts and propose mitigation measures to reduce those impacts to a less-than-significant level.

A. There is Substantial Evidence Supporting a Fair Argument that the MND Underestimates and Fails to Properly Mitigate Air Quality Impacts

Under CEQA a project has significant impacts if it “[v]iolate[s] any air quality standard or contribute[s] substantially to an existing or projected air quality violation” or “[e]xpose[s] sensitive receptors to substantial pollutant concentrations.”⁵⁰ The South Coast Air Quality Management District (“SCAQMD”) maintains thresholds of significance for criteria air pollutants that are to be used in determining the significance of a project's air quality impacts under CEQA.⁵¹ The MND acknowledges that the proposed project would result in a significant impact if it exceeds the SCAQMD construction and operational significance thresholds,⁵² but concludes that Project emissions would not violate applicable thresholds.

SWAPE reviewed the MND's air quality analysis and concludes that the MND contains numerous errors and omissions in its emissions modeling which result in the MND substantially underestimating construction and operational emissions. SWAPE performed independent modeling of the Project's construction and operational emissions to correct these errors and concludes that the Project will result in significant health risks from emissions of toxic air contaminants (“TACs”), as well as significant GHG emissions.

1. The MND Fails to Accurately Calculate Construction and Operational Emissions.

The Air Quality construction emissions analysis is flawed due to several factors. As SWAPE explains there were: (1) unsubstantiated input parameters used to estimate project emissions;⁵³ (2) the CalEEMod model used by the Applicant failed to model all proposed land use types in the Project;⁵⁴ (3) the Applicant edited

⁵⁰ CEQA Appendix G.

⁵¹ See SCAQMD Thresholds, available at <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>.

⁵² MND, p. 61.

⁵³ SWAPE comment letter, p.3.

⁵⁴ SWAPE comment letter, pp. 3-4.

5078-001acp

the acres of grading value in the CalEEMod model resulting in an unsubstantiated reduction to acres of grading value;⁵⁵ (4) the Applicant edited the number of hauling trips in the CalEEMod model resulting in an unsubstantiated reduction to default demolition haul trip numbers;⁵⁶ (5) the Applicant edited the number of operational trips types and lengths in the CalEEMod model resulting in unsubstantiated values for operational trips;⁵⁷ and (6) the Applicant failed to properly apply operational mitigation measures resulting in unenforceable mitigation measures.⁵⁸

Additionally, the MND's air quality construction emissions analysis hinges on a variety of fugitive dust control measures related to wetting the soil during construction⁵⁹ Yet, the MND fails to describe the amount of water necessary to comply with these measures and whether such water is available.⁶⁰ Failure to have an adequate water supply to implement these dust control measures could significantly increase the Project's PM emissions during construction, which would significantly alter the MND's Air Quality analysis.

For restaurant odor control, the Applicant cites SCAQMD Rule 1138 stating it requires "the installation of odor reducing equipment."⁶¹ That is only partially correct since Rule 1138 governs "chain-driven charbroilers used to cook meat" which presumably do help contain odor somewhat. Any other form of odor-producing cooking methods are not regulated under Rule 1138 though and thus odors beyond cooked meat are not properly addressed under this section and provide an incomplete picture of whether there could be odors adversely affecting a substantial number of people.⁶² The MND fails to discuss operational odor impacts that would not be regulated by SCAQMD Rule 1138.

Finally, the haul trip distance calculation issues further discussed under V.C presumably underestimate the distance of haul trips by half and would thus be incorrect and would need to be recalculated and then judged against the SCAMD thresholds.

⁵⁵ SWAPE comment letter, p.4.

⁵⁶ SWAPE comment letter, p.5.

⁵⁷ SWAPE comment letter, pp. 6-7.

⁵⁸ SWAPE comment letter, pp. 7-8.

⁵⁹ MND, pp. 62-63.

⁶⁰ *Id.*

⁶¹ MND, p. 70.

⁶² MND, p. 70.

5078-001acp

As a result of the errors in the MND's emissions analysis, the MND's conclusions regarding the severity of the Project's air quality impacts are unsupported.

B. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant, Unmitigated Health Risk from Toxic Air Contaminants

SWAPE performed a Health Risk Screening Analysis, which looked at air emissions and their correlation to risks of increased cancer.⁶³ SWAPE's analysis relied on "OEHHA guidance and recommended guidance put out by the SCAQMD, BAAQMD, and SJVAPCD" to account for the carcinogenic toxicity of air pollution.⁶⁴ SWAPE determined that the construction and operation of the Project could result in a potentially significant health risk impact when correct exposure assumptions and up-to-date applicable guidance are used.⁶⁵ Specifically, SWAPE found that the excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy throughout Project construction and operation, utilizing age sensitivity factors, are approximately 13, 120, 360, and 21 in one million, respectively, and that the excess cancer risk throughout a residential lifetime (30 years), utilizing age sensitivity factors, is approximately 520 in one million.⁶⁶ All of these cancer risks exceed the SCAQMD threshold of 10 in one million, resulting in a potentially significant impact that the MND fails to disclose or mitigate.

SWAPE's comments provide substantial evidence supporting a fair argument that the Project will result in potentially significant health risks that the MND underestimates and fails to properly mitigate.

C. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant, Unmitigated GHG Emissions

CEQA requires the lead agency to use scientific data to evaluate GHG impacts directly and indirectly associated with a project.⁶⁷ The analysis must

⁶³ SWAPE comment letter, pp.12-16.

⁶⁴ SWAPE comment letter, p.14.

⁶⁵ SWAPE comment letter, p.16 vs. MND, p. 69.

⁶⁶ SWAPE comment letter, p.15.

⁶⁷ See 14 C.C.R. § 15064.4(a) (lead agencies "shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project); 14 C.C.R. § 15064(d) (evaluating significance of the environmental effect of a project requires consideration of reasonably foreseeable indirect physical
5078-001acp

“reasonably reflect evolving scientific knowledge and state regulatory schemes.”⁶⁸ In determining the significance of GHG emissions impacts, the agency must consider the extent to which the project may increase GHG emissions compared to the existing environmental setting and the “extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions.”⁶⁹

Under Section 15064.4, an agency can either measure GHG emissions (1) numerically (by comparing tons/metric tons of GHG emissions to a numeric – e.g. “Quantitative” - GHG significance threshold), or (2) by determining whether the project is consistent with applicable climate change plans / GHG reduction plans (“Qualitative” threshold).⁷⁰

The City either did not understand this distinction or deliberately tried to obfuscate their findings by combining the two approaches.⁷¹ The MND’s GHG analysis starts by calculating a GHG amount for the project indicating that the MND would utilize a quantitative approach. After this initial analysis, the MND then goes on to claim that because none of the applicable climate change plans / GHG reduction plans contains a project-specific quantitative GHG significance threshold (which they do), the City’s quantitative GHG number is thus not in violation of any of the climate change plans.

changes caused by the project); 14 C.C.R. § 15358(a)(2) (defining “effects” or “impacts” to include indirect or secondary effects caused by the project and are “later in time or farther removed in distance, but are still reasonably foreseeable” including “effects on air”); CEQA Guidelines, Appendix G, § VIII: Greenhouse Gas Emissions (stating agencies should consider whether the project would “generate greenhouse gas emissions, **either directly or indirectly**, that may have a significant impact on the environment.”) (emphasis added).

⁶⁸ 14 C.C.R. § 15064.4(b); see also *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504 (holding that lead agencies have an obligation to track shifting regulations and to prepare EIRs in a fashion that keeps “in step with evolving scientific knowledge and state regulatory schemes”).

⁶⁹ 14 C.C.R. § 15064.4(b)(1), (3).

⁷⁰ 14 C.C.R. § 15064.4.

⁷¹ MND, pp.104-109.

5078-001acp

1. Failure to Adequately Evaluate Greenhouse Gas Impacts

The MND estimates that the Project would generate net annual GHG emissions of 898.90 metric tons of carbon dioxide equivalents per year (“MT CO₂e/year”), after the inclusion of GHG reduction measures (see excerpt below).⁷²

Table 4.9
Proposed Project Operational Greenhouse Gas Emissions

Emissions Source	Estimated Project Generated CO ₂ e Emissions (Metric Tons per Year)		
	Base Project Without GHG Reduction Features	Proposed Project	Percent Reduction ^a
Area	<0.01	<0.01	0%
Energy	373.08	373.08	0%
Mobile (Motor Vehicles)	591.04 ^{b,c}	473.98	20%
Stationary	4.59	4.59	0%
Waste	28.36	14.18	50%
Water	24.34	19.47	20%
Construction Emissions ^d	13.60	13.60	--
Total GHG Emissions:	1,035.01	898.90	13%
Notes: ^a The Percent Reduction is not a quantitative threshold of significance, but shows the efficacy of the Project's compliance with the various regulations, plans and policies that have been adopted with the intent of reducing GHG emissions. ^b Based on Proposed Project mobile source GHG emissions excluding Mitigation Measures and reduced VMT. ^c Calculated proportionately based on Proposed Project mobile trips with reductions 494 trips to trips without reductions 616 trips and multiplied with the GHG emissions of 473.98 MTCO ₂ e. ^d The total construction GHG emissions were amortized over 30 years and added to the operation of the Project. Calculation data and results provided in Appendix E, Greenhouse Gas Emissions Worksheets.			

However, the MND does not compare the Project's net annual GHG emissions estimates to a quantitative GHG threshold, stating:

“In the absence of any adopted numeric threshold, the significance of the Project's GHG emissions is evaluated consistent with CEQA Guidelines Section 15064.4(b)(2) by considering whether the Project complies with applicable plans, policies, regulations, and requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. For this Project, as a land use development project, the most directly applicable adopted regulatory plan to reduce GHG emissions is the

⁷² MND, p.104; SWAPE Comment letter, p. 16.
5078-001acp

2020 RTP/SCS, which is designed to achieve regional GHG reductions from the land use and transportation sectors as required by SB 375 and the State's long-term climate goals. This analysis also considers consistency with regulations or requirements set forth by the 2008 Scoping Plan and subsequent updates SB 375, SCAG's 2020 RTP/SCS, and the L.A. Green Building Code."⁷³

As demonstrated in the excerpt above, the Project relies upon the Project's consistency with CARB's 2017 *Scoping Plan*, SB 375, SCAG's 2020 *RTP/SCS*, and the L.A. Green Building Code to conclude that the Project would result in a less-than-significant GHG impact. However, the MND's GHG analysis, as well as the subsequent less-than-significant impact conclusion, is unsupported for four reasons.⁷⁴

a) The MND's quantitative GHG analysis relies upon an incorrect and unsubstantiated air model.

As previously stated, the MND estimates that the Project would generate net annual GHG emissions of 898.90 MT CO₂e/year, after the inclusion of GHG reduction measures.⁷⁵ However, the MND's quantitative GHG analysis is unsubstantiated. When SWAPE reviewed the Project's CalEEMod output files, provided in the Greenhouse Gas Emissions Worksheets as Appendix E to the MND, they found that several of the values inputted into the model are not consistent with information disclosed in the IS/MND. As a result, SWAPE concludes that the MND's emissions modeling underestimates the Project's emissions, and the MND's quantitative GHG analysis should not be relied upon to determine Project significance.

An EIR should be prepared that adequately assesses the potential GHG impacts that the construction and operation of the proposed Project may have on the surrounding environment.⁷⁶

⁷³ MND, p.103; SWAPE Comment letter, p. 17.

⁷⁴ SWAPE Comment letter, p. 17.

⁷⁵ MND, p.104.

⁷⁶ SWAPE comment letter, p.17.

b) The MND's unsubstantiated air model indicates a potentially significant impact.

The MND's incorrect and unsubstantiated air model indicates a potentially significant GHG impact, when applying the widely-used 2030 "Substantial Progress" threshold of 660 MT CO₂e/year⁷⁷ and AEP "2030 Land Use Efficiency Threshold" of 2.6 metric tons of carbon dioxide equivalents per service population per year ("MT CO₂e/SP/year").⁷⁸ In support of thresholds for the 2030 target, AEP guidance states:

"Once the state has a full plan for 2030 (which is expected in 2017), and then a project with a horizon between 2021 and 2030 should be evaluated based on a threshold using the 2030 target. A more conservative approach would be to apply a 2030 threshold based on SB 32 for any project with a horizon between 2021 and 2030 regardless of the status of the Scoping Plan Update" (emphasis added).⁷⁹

As the California Air Resources Board ("CARB") adopted California's 2017 Climate Change Scoping Plan in November of 2017, the proposed Project "should be evaluated based on a threshold using the 2030 target," according to the relevant guidance referenced above. Thus, to evaluate the Project's GHG emissions quantitatively, SWAPE compared the Project's GHG emissions, as estimated by the IS/MND, to the widely-used 2030 "Substantial Progress" threshold of 660 MT

⁷⁷ See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6; SWAPE Comment letter, p. 18.

⁷⁸ "Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California." Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40.

⁷⁹ "Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California." Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40.

CO₂e/SP/year⁸⁰ and AEP “2030 Land Use Efficiency Threshold” of 2.6 MT CO₂e/SP/year.⁸¹

The MND estimates that the Project would generate net annual GHG emissions of 898.90 MT CO₂e/year. Furthermore, according to CAPCOA’s CEQA & Climate Change report, service population is defined as “the sum of the number of residents and the number of jobs supported by the project.”⁸² The MND estimates that the Project would employ approximately 216 people upon buildout.⁸³ As the Project does not propose any residential land uses, SWAPE estimates a service population of 216 people.⁸⁴ Dividing the Project’s GHG emissions, as estimated by the IS/MND, by a service population value of 216 people, SWAPE finds that the Project would emit approximately 4.2 MT CO₂e/SP/year (see table below).⁸⁵

IS/MND Modeling Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Net Annual GHG Emissions	899
Threshold	660
Exceed?	Yes
Service Population	216

⁸⁰ See: “JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT.” City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vrbRH0, p. 7; “TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT.” City of Fremont, February 2020, available at: “SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT.” City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

⁸¹ SWAPE comments, p. 18, citing “Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California.” Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40; SWAPE Comment letter, p. 16.

⁸² CAPCOA (Jan. 2008) CEQA & Climate Change, p. 71-72, <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf>.

⁸³ MND, p.127.

⁸⁴ Calculated: 216 employees + 0 residents = 216 service population.

⁸⁵ Calculated: (898.90 MT CO₂e/year) / (216 service population) = (4.2 MT CO₂e/SP/year); SWAPE Comment letter, p. 18.

Service Population Efficiency	4.2
Threshold	2.6
<i>Exceed?</i>	<i>Yes</i>

As demonstrated above, the Project's estimated net annual GHG emissions and service population efficiency value exceed the 2030 "Substantial Progress" threshold of 660 MT CO₂e/SP/year and AEP's "2030 Land Use Efficiency Threshold" of 2.6 MT CO₂e/SP/year, respectively. As a result, SWAPE concludes that the MND's less-than-significant GHG impact conclusion should not be relied upon. An EIR should be prepared for the Project and mitigation measures should be implemented to reduce the Project's GHG emissions to less-than-significant levels.⁸⁶

c) The MND fails to consider the performance-based standards under CARB's *Scoping Plan*.

The Project relies upon the Project's consistency with CARB's 2017 *Scoping Plan* to conclude that the Project would result in a less-than-significant GHG impact (p. 103). However, SWAPE's review of the Project documents demonstrates that the MND fails to consider the performance-based standards under the CARB's 2017 *Scoping Plan*.⁸⁷

(1) Passenger & Light Duty VMT Per Capita Benchmarks per SB 375

In reaching the State's long-term GHG emission reduction goals, CARB's 2017 *Scoping Plan* explicitly cites to SB 375 and the VMT reductions anticipated under the implementation of Sustainable Community Strategies.⁸⁸ CARB has identified the population and daily VMT from passenger autos and light-duty vehicles at the state and county level for each year between 2010 to 2050 under a "baseline scenario" that includes "current projections of VMT included in the existing Regional Transportation Plans/Sustainable Communities Strategies (RTP/SCSs) adopted by the State's 18 Metropolitan Planning Organizations (MPOs)

⁸⁶ SWAPE Comment letter, p. 19.

⁸⁷ SWAPE Comment letter, p. 19.

⁸⁸ "California's 2017 Climate Change Scoping Plan." CARB, November 2017, *available at*: https://ww3.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf, p. 25, 98, 101-103.

5078-001acp

pursuant to SB 375 as of 2015.”⁸⁹ By dividing the projected daily VMT by the population, SWAPE calculated the daily VMT per capita for each year at the state and county level for 2010 (baseline year), 2024 (Project operational year), and 2030 (target years under SB 32) (see table below and Attachment B).⁹⁰

2017 Scoping Plan Daily VMT Per Capita						
	Los Angeles County			State		
Year	Population	LDV VMT Baseline	VMT Per Capita	Population	LDV VMT Baseline	VMT Per Capita
2010	9,838,771	216,979,221.64	22.05	37,335,085	836,463,980.50	22.40
2024	10,627,846	219,237,756.72	20.63	41,994,283	926,776,780.89	22.07
2030	10,868,614	215,539,586.12	19.83	43,939,250	957,178,153.20	21.78

As explained in SWAPE’s comments, the below table compares the 2017 *Scoping Plan* daily VMT per capita values against the daily VMT per capita values for the Project based on SWAPE’s updated modeling (see table below and Attachment B).

Daily VMT Per Capita from Passenger & Light-Duty Trucks, Exceedances under 2017 Scoping Plan Performance-Based SB 375 Benchmarks	
Sources	SWAPE Modeling
Annual VMT from Auto & Light-Duty Vehicles	2,360,016
Daily VMT from Auto & Light-Duty Vehicles	6,466
Service Population	216
Daily VMT Per Capita	29.93
2017 Scoping Plan Benchmarks, Statewide	
22.40 VMT (2010 Baseline) Exceed?	Yes
22.07 VMT (2024 Projected) Exceed?	Yes
21.78 VMT (2030 Projected) Exceed?	Yes

⁸⁹ “Supporting Calculations for 2017 Scoping Plan-Identified VMT Reductions,” Excel Sheet “Readme.” CARB, January 2019, available at: https://ww2.arb.ca.gov/sites/default/files/2019-01/sp_mss_vmt_calculations_jan19_0.xlsx.

⁹⁰ SWAPE Comment letter, pp. 19-20.
5078-001acp

2017 Scoping Plan Benchmarks, Los Angeles County Specific	
22.05 VMT (2010 Baseline) Exceed?	Yes
20.63 VMT (2024 Projected) Exceed?	Yes
19.83 VMT (2030 Projected) Exceed?	Yes

As shown above, SWAPE's updated modeling estimates that the Project exceeds the CARB 2017 *Scoping Plan* projections for 2010, 2024, and 2030. Because the exceeds the CARB 2017 *Scoping Plan* performance-based daily VMT per capita projections, the Project conflicts with the CARB 2017 *Scoping Plan*. As such, a Project-specific EIR should be prepared for the proposed Project to provide additional information and analysis demonstrating that the Project would result in a less-than-significant GHG impact.⁹¹

d) The MND fails to consider the performance-based standards under SCAG's RTP/SCS.

The Project relies upon the Project's consistency with SCAG's 2020-2045 RTP/SCS in order to conclude that the Project would result in a less-than-significant GHG impact. However, SWAPE's review of the Project documents demonstrates that the MND fails to consider the performance-based standards under SCAG's 2020-2045 RTP/SCS, such as: (i) per capita GHG emission targets, or (ii) daily vehicle miles traveled ("VMT") per capita benchmarks.⁹²

(1) SB 375 Per Capita GHG Emission Goals

SB 375 was signed into law in September 2008 to enhance the state's ability to reach AB 32 goals by directing CARB to develop regional 2020 and 2035 GHG emission reduction targets for passenger vehicles (autos and light-duty trucks). In March 2018, CARB adopted updated regional targets requiring a 19 percent decrease in VMT for the SCAG region by 2035. This goal is reflected in SCAG's 2020 RTP/SCS Program Environmental Impact Report ("PEIR"),⁹³ in which the 2020

⁹¹ SWAPE Comment letter, p. 20.

⁹² SWAPE Comment letter, p. 20.

⁹³ "Connect SoCal Certified Final Program Environmental Impact Report." SCAG, May 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocial_complete.pdf?1607981618.

5078-001acp

RTP/SCS PEIR updates the per capita emissions to 21.3 lbs/day in 2020 and 18.8 lbs/day in 2035 (see excerpt below).⁹⁴

**Table 3.8-10
SB 375 Analysis**

	2005 (Baseline)	2020 (Plan)	2035 (Plan)
Resident population (per 1,000)	17,161	19,194	21,110
CO2 emissions (per 1,000 tons)	204.0 ^{/a/}	204.5 ^{b/}	198.6 ^{b/}
Per capita emissions (pounds/day)	23.8	21.3	18.8
% difference from Plan (2020) to Baseline (2005)			-8%
% difference from Plan (2035) to Baseline (2005)			-19% ^{/c/}

Note:

/a/ Based on EMFAC2007

/b/ Based on EMFAC2014 and SCAG modeling, 2019.

/c/ Includes off-model adjustments for 2035 and 2045

Source: SCAG modeling, 2019.

<http://www.scag.ca.gov/committees/CommitteeDocLibrary/jointRCPC110515fullagn.pdf>

In order to evaluate consistency with this SB 375 objective and SCAG's RTP/SCS performance-based goals, SWAPE calculated the Project's per-capita CO₂ emissions from passenger and light duty vehicles (see Attachment B). First, total annual GHG mobile emissions were multiplied by the percentage of auto and light-duty truck fleet mix, then converted into total pounds per day, then divided by the estimated service population of 216. The below table shows the per capita emissions for the Project based on SWAPE's updated modeling (see table below and Attachment B).⁹⁵

CO₂e Per Capita Emissions from Passenger & Light-Duty Trucks,	
Exceedances under RTP/SCS Performance-Based SB 375 Goals	
Sources	Project

⁹⁴ "Connect SoCal Certified Final Program Environmental Impact Report." SCAG, May 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocal_complete.pdf?1607981618, p. 3.8-74; SWAPE Comment letter, p. 21.

⁹⁵ SWAPE Comment letter, p. 21.

	SWAPE Modeling
Annual Mobile Emissions (MT CO ₂ e/year)	1,020.28
Passenger & Light-Duty Fleet Mix (%)	91.22%
Daily CO ₂ e Emissions (lbs/day)	5,621.31
Service Population	216
Per Capita Emissions (lbs/day)	26.02
21.3 lbs/day/SP (2020 Goal) Exceeded?	Yes
18.8 lbs/day/SP (2035 Goal) Exceeded?	Yes

As shown in the above table, when utilizing SWAPE's updated modeling, the Project would result in 26.02 pounds per day per service population ("lbs/day/SP"). This exceeds both SCAG's 2020 and 2035 targets of 21.3- and 18.8-lbs/day/SP, respectively, indicating that the Project is inconsistent with SCAG's *RTP/SCS*.⁹⁶

(2) SB 375 RTP/SCS Daily VMT Per Capita Target

Under the SCAG's 2020 *RTP/SCS*, daily VMT per capita in the SCAG region should decrease from 23.2 VMT in 2016 to 20.7 VMT by 2045.⁹⁷ Daily VMT per capita in San Bernardino County should decrease from 22.2 to 19.2 VMT during that same period.⁹⁸

Here, however, the MND fails to consider any of the abovementioned performance-based VMT targets. In order to evaluate consistency with the *RTP/SCS*'s performance-based VMT reduction targets, SWAPE calculated the Project's VMT from passenger and light duty vehicles (calculations attached hereto as Attachment B). First, annual VMTs from passenger automobile and light-duty vehicle were calculated based on the CalEEMod default fleet mix, converted into daily VMT, and divided by the estimated service population of 216. The below table

⁹⁶ SWAPE Comment letter, p. 22.

⁹⁷ "Connect SoCal." SCAG, September 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal-plan_0.pdf?1606001176, pp. 138.

⁹⁸ "Connect SoCal." SCAG, September 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal-plan_0.pdf?1606001176, pp. 138; SWAPE Comment letter, p. 22. 5078-001acp

shows the daily VMT per capita for the Project based on SWAPE's updated modeling (see table below and Attachment B). ⁹⁹

Daily VMT Per Capita from Passenger & Light-Duty Trucks, Exceedances under RTP/SCS Performance-Based SB 375 Target	
Sources	Project
	SWAPE Modeling
Annual VMT from Auto & Light-Duty Vehicles	2,360,016
Daily VMT from Auto & Light-Duty Vehicles	6,466
Service Population	216
Daily VMT Per Capita	29.93
2020 RTP/SCS Benchmarks, SCAG-Wide	
23.2 VMT (2016 Baseline) Exceed?	Yes
20.7 VMT (2045 Target) Exceed?	Yes
2020 RTP/SCS Benchmarks, Los Angeles County	
22.2 VMT (2016 Baseline) Exceed?	Yes
19.2 VMT (2045 Target) Exceed?	Yes

As shown in the above table, based on a service population of 216, the Project would result in 29.93 daily VMT per capita from passenger auto and light-duty truck vehicles. This exceeds all SCAG and Los Angeles County specific benchmarks and targets under SCAG's 2020-2045 *RTP/SCS*. Thus, based on SWAPE's updated modeling, the Project would exceed the 2016 baseline and 2045 target VMT per

⁹⁹ SWAPE Comment letter, p. 23.
5078-001acp

capita values for both Los Angeles County and the SCAG region as a whole, indicating that the Project conflicts with the SCAG's *RTP/SCS* and SB 375.¹⁰⁰

Because the MND fails to provide either a quantitative or qualitative analysis of these issues, the MND lacks substantial evidence to support its conclusion that the Project's GHG impacts would be less than significant. SWAPE's analysis provides substantial evidence supporting a fair argument that the Project may result in significant GHG emissions which the MND underestimates and fails to properly mitigate.

2. The MND Fails to Adopt All Feasible Mitigation Measures to Reduce Significant GHG Impacts

SWAPE provides an abundance of feasible mitigation measures the Project could use to reduce the impacts of its GHG emissions, which the MND fails to consider. For example, SWAPE provides a list of proposals from CAPCOA's Quantifying Greenhouse Gas Measures Report.¹⁰¹ Mitigation measures proposed by SWAPE include, among other things, programable thermostats, limits on outdoor lighting, alternative energy generation, grouped parking requiring residential permits, carpooling programs, school bus programs, local shuttles, water recycling, water-efficient landscapes, alternative fuels for construction equipment, carbon sequestration, and local and sustainable building materials.¹⁰²

In light of this readily available information, the burden is on the City to explain specifically whether it believes the proposed mitigation is not feasible, and if not, why not.¹⁰³ All feasible mitigation should be adopted in a revised MND.

D. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts from Energy Use

CEQA requires agencies to analyze a project's energy impacts when "the project's energy use reveals that the project may result in significant environmental effects due to the wasteful, inefficient, or unnecessary use of energy...."¹⁰⁴ The

¹⁰⁰ SWAPE Comment letter, p. 23.

¹⁰¹ SWAPE Comments, pp. 43-51.

¹⁰² SWAPE comment letter, pp. 23-30.

¹⁰³ See *Covington*, 43 Cal.App.5th at 879-883 (holding that revised EIR was required where respondent failed to explain why the petitioners' proposed mitigation measure was not feasible).

¹⁰⁴ 14 C.C.R. § 15126.2(b).

5078-001acp

CEQA Guidelines also state that the analysis of a project's energy impacts "should include the project's energy use for all project phases and components," and that relevant considerations include "the project's size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project."¹⁰⁵ Further guidance for considering energy impacts is included in Appendix F of the Guidelines, which states that the energy analysis may include the project's energy requirements "for each stage of the project including construction, operation, maintenance and/or removal," "[t]he effects of the project on local and regional energy supplies and on requirements for additional capacity," and "[t]he effects of the project on peak and base period demands for electricity and other forms of energy."¹⁰⁶

First, during the construction phase the energy usage is calculated incorrectly since Appendix C: (a) fails to differentiate which site the hauling calculation is determined from; and (b) fails to account for two-way trips to the Sunshine Canyon landfill thus resulting in incorrect gasoline and diesel consumption calculations.¹⁰⁷

The Construction Worker, Vendor, and Hauling Gasoline and Diesel Consumption table in Appendix C has a column titled trip length. During the demolition and grading phase, this column has the trip length listed as 30 miles.¹⁰⁸ It is unclear how this number was determined since trips to the Waste Management Downtown Diversion recycling facility are 1.4 miles round trip and trips to the Sunshine landfill are 60 miles round trip.

If some average was performed between the two centers it is not clear in Appendix C or the MND. Appendix C, and the MND, should reflect the number of trips to the Waste Management site round trip in miles then add it to the number of trips to the Landfill in miles, and then divide that number by the total number of round trips for the correct haul length. On the other hand, if the number indicates the Sunshine Canyon landfill haul trips only the calculation is incorrect because it only calculates half the trip because it is 30 miles to the landfill and another 30 back to the site. Thus the Applicant has either failed to correctly perform the

¹⁰⁵ *Id.*

¹⁰⁶ CEQA Guidelines, Appendix F: Energy Conservation, §§ C(1)–C(3).

¹⁰⁷ See MND, p.44-45 compared to MND, p. 82 Table 4.4 and MND, Appendix C p.5.

¹⁰⁸ See MND, p.44-45 compared to MND, p. 82 Table 4.4 and MND, Appendix C p.5.
5078-001acp

calculations or deprived the public and decision-makers of the math behind these calculations.

Second, the operational energy uses calculations fail to account for all the commercial space energy uses. Tables 4.5 and 4.6 in the Energy Use section assume 103 hotel rooms during operation and these rooms will consume 512,522kWh/year and 1,588,982cf/month. These two tables, along with the entire Energy Use section, fail to account for all types of operational energy use because they only account for energy consumed by the hotel rooms and not the “approximately 15,907 square feet of commercial space comprised of an art gallery, café, restaurant, and bar.”¹⁰⁹ This is a legal deficiency according to CEQA Appendix F because the MND because fails to provide substantial evidence of all the Project’s operational energy uses.¹¹⁰ Thus, the MND’s conclusion that the energy use has a “less than significant impact” is premature since it fails to analyze all operational energy uses.¹¹¹ The City cannot rely on conclusory statements in the MND to support its significance determinations regarding energy impacts.

E. The MND Lacks Substantial Evidence to Support its Conclusion that the Project Will Not Result in Significant, Unmitigated Impacts from Hazards on the Project Site

A lead agency’s significance determination must be supported by accurate scientific and factual data.¹¹² An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.¹¹³ These standards apply to an EIR’s analysis of the public health impacts of a Project.

The disturbance of toxic soil contamination at a project site is a potentially significant impact requiring CEQA review and mitigation.¹¹⁴ Indeed, this is the

¹⁰⁹ MND, p. 8.

¹¹⁰ CEQA Guidelines, Appendix F: Energy Conservation, §§ C(1)–C(3).

¹¹¹ MND, p.88.

¹¹² 14 C.C.R. § 15064(b).

¹¹³ *Kings County Farm Bureau*, 221 Cal.App.3d at 732.

¹¹⁴ *Cal. Build. Indust. Ass’n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90; ; *Citizens For Responsible Equitable Envt’l Dev. v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 331-2 (“*CREED v. Chula Vista*”).

5078-001acp

only way to explain a long line of cases requiring analysis and clean-up of hazardous waste the site of a proposed project as part of the CEQA analysis.¹¹⁵

The failure to provide the information required by CEQA makes a meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.¹¹⁶ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in a CEQA document or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.¹¹⁷

In this case, the MND concludes that the Project would have less than significant hazardous materials impacts based on an unsupported conclusion stating no hazards are present at the Project site. However, as Mr. Hagemann explains, the MND's conclusion is entirely unsupported because the MND failed to conduct a soil or groundwater study to determine whether hazards are present, including failing to prepare even a Phase I Environmental Site Assessment ("ESA") for the Project site.¹¹⁸ Instead, the MND found a less than significant impact based solely on a regulatory database search of the California Department of Toxic Substances Control Envirostor website.¹¹⁹ This approach fails to comply with CEQA, and as Mr. Hagemann explains, fails to meet basic standards of care associated with hazards assessment for construction projects.

The EPA banned asbestos-containing materials in 1989, and lead-based paints were banned for use in 1978. The existing building on the Project Site was constructed in 1914. Therefore, some building material such as dry wall, stucco, as well as the sheet roofing and mastic are suspected to contain asbestos may have been used in the building.¹²⁰ This could be confirmed through the use of a Phase I ESA.

¹¹⁵ *Association For A Cleaner Environment v. Yosemite Comm. College Dist.* (2004) 116 Cal.App.4th 629 ("ACE v. Yosemite"), *McQueen v. Bd. of Directors* (1988) 202 Cal.App.3d 1136; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1599 CEQA Guidelines, Appendix G.

¹¹⁶ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

¹¹⁷ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

¹¹⁸ SWAPE comment letter, p.2.

¹¹⁹ <https://www.envirostor.dtsc.ca.gov/public/>; MND, p. 111.

¹²⁰ MND, p. 112.

5078-001acp

A Phase I ESA is often included in CEQA documentation to identify hazardous materials issues that may pose a risk to the public, workers, or the environment, and which may require further investigation through the conduct of a Phase II ESA. Components of a Phase I include:

- a review of all known sites in the vicinity of the subject property that are on regulatory agency databases undergoing assessment or cleanup activities;
- an inspection;
- interviews with people knowledgeable about the property; and
- recommendations for further actions to address potential hazards.
- Standards for performing a Phase I ESA have been established by the US EPA and the American Society for Testing and Materials Standards (ASTM).¹²¹

Phase I ESAs conclude with the identification of any “recognized environmental conditions” (“RECs”) and recommendations to address such conditions. A REC is the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or the ground, groundwater, or surface water of the property. If RECs are identified, then a Phase II ESA generally follows, which includes the collection of soil, soil vapor, and groundwater samples, as necessary, to identify the extent of contamination and the need for cleanup to reduce exposure potential to the public.¹²²

Mr. Hagemann explains that a search of the Envirostor website, as performed for the MND, is insufficient for determining Project impacts. Due diligence practices commonly used in CEQA proceedings include the preparation of a Phase I ESA, completed by a licensed environmental professional. The preparation of an EIR, to include a Phase I ESA, is necessary to identify recognized environmental conditions, if any, at the proposed Project site. Mr. Hagemann concludes that the MND should have performed a Phase I ESA in order to determine for the Project of whether hazards exists, since the Envirostar website

¹²¹ <http://www.astm.org/Standards/E1527.htm>; SWAPE comment letter, p.2

¹²² SWAPE comment letter, p.2
5078-001acp

only relies on reported hazards, and not necessarily hazards specific to this Project site.¹²³

Mr. Hagemann further explains that, if a REC is identified, a Phase II ESA should be conducted to sample for potential contaminants in soil, soil vapor, and groundwater. Any contamination that is identified above regulatory screening levels, including California Office of Environmental Health Hazard Assessment's Soil Screening Numbers¹²⁴, should be further evaluated and cleaned up, if necessary, in coordination with the Regional Water Quality Control Board and the California Department of Toxics Substances Control.¹²⁵

As a result of the City's failure to disclose and analyze the Project's potential soil and groundwater contamination, the City lacks substantial evidence to support the MND's conclusions that the Project's hazardous materials impacts are less than significant. The City should prepare an EIR to include the Phase I and Phase II ESAs necessary to accurately evaluate the Project site's existing levels of contamination and to propose mitigation measures to fully clean the site to residential standards before Project construction can begin.

F. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts from Noise

First, the MND incorrectly determines the baseline ambient dB levels.¹²⁶ The MND's ambient dB levels may not be indicative of an actual baseline since the test was limited to 15 min at noon. One 15-minute time period cannot accurately determine the ambient noise from 7 AM to 6 PM, which are the hours of construction per proposed Mitigation Measure MM-N-1 for this project. Ambient noise varies and is due to the traffic flow and construction activities at the time of the measurement, and therefore may not be "comparable to that during which the measurement is taken of the particular noise source being measured."¹²⁷

Second, the MND proposes that the 8ft wall will result in a 10 dB reduction in noise. Common sense dictates otherwise since an 8ft wall will not protect

¹²³ SWAPE comment letter, p.2

¹²⁴ <http://oehha.ca.gov/risk/chhsltable.html>

¹²⁵ SWAPE comment letter, p.2

¹²⁶ Shaw comment letter, p.2.

¹²⁷ City of Los Angeles Municipal Code Chapter XI Noise Regulation 111.01 (a); Shaw comment letter, p.2.

5078-001acp

adjacent stories that are higher than 8ft next to the construction site. Sound is a wave and thus radiates in all directions equally. Thus, an 8ft wall will only result in dB reduction for the single adjacent story to the construction site and only when construction noise emanates from the first floor. This measure fails to account for construction on floors 2-15, but the MND acts as if this reduction level can apply to the entire project.¹²⁸

These issues provide substantial evidence supporting a fair argument that the MND underestimates and fails to properly mitigate Noise impacts on the Project Site.

G. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts on Transportation

First, bullet D.5 under the MND's Transportation section claims that the Project will meet the TDM requirements under LAMC Section 12.26.J which regulates Transportation Demand Management and Trip Reduction Measures.¹²⁹ The MND claims this even though LAMC section 12.26.J requires that certain areas be designated for employee carpool and vanpool for commercial spaces over 25,000ft and the MND fails to address how this requirement is met. The MND merely makes a conclusory statement that this LAMC section will be met without any discussion or analysis of how. The MND may be lumping this LAMC section 12.26.J requirement into its variance request for offsite parking. Even if this were the case, the MND fails to analyze whether this offsite parking agreement would be adequate to meet the LAMC requirements because there is no information regarding their variance request and whether it will include carpool areas. Given the lack of discussion regarding the offsite parking agreement throughout the MND, it seems the MND concludes that all parking-related requirements are met if the magic words "offsite agreement for parking" are included. The City cannot rely on such conclusory statements to determine whether significant impacts will exist as to Transportation.

Second, according to the Transportation Study, provided as Appendix G to the MND, the Project is expected to generate approximately 732 average daily vehicle trips.¹³⁰

¹²⁸ MND, p. 147; Shaw comment letter, p.2.

¹²⁹ LAMC section 12.26.J.

¹³⁰ MND Appendix G, p.32.

Table 6
Project Weekday Trip Generation Summary¹

Land Use	ITE Code	Intensity ²	Average Weekday	AM Peak Hour			PM Peak Hour		
				In	Out	Total	In	Out	Total
Trip Generation Rates									
Hotel	310	1 rm	8.36	50%	41%	0.47	51%	49%	0.60
Trip Generation Summary									
Description	Size	Average Weekday	AM Peak Hour			PM Peak Hour			
			In	Out	Total	In	Out	Total	
PROPOSED USE									
Lodging									
Hotel	103 rm	861	28	20	48	32	30	62	
15% Transit/Walk Adjustment ³		(129)	(4)	(3)	(7)	(5)	(4)	(9)	
Proposed Project Trips		732	24	17	41	27	26	53	

As such, SWAPE explains that the model for the proposed land uses should have included trip rates that reflect the number of average daily operational vehicle trips anticipated. However, a review of the CalEEMod output files demonstrates that the “Rendon Hotel Project” model includes only 494.40, 495.43, and 360.50 weekday, Saturday, and Sunday average vehicle trips, respectively.¹³¹

Land Use	Average Daily Trip Rate		
	Weekday	Saturday	Sunday
Hotel	494.40	495.43	360.50
Total	494.40	495.43	360.50

As SWAPE explains, the weekday, Saturday, and Sunday trip numbers are underestimated by approximately 238, 237, and 372 trips, respectively. As such, SWAPE concludes that the trip rates inputted into the proposed land-use models are underestimated and inconsistent with the information provided by the MND.

These inconsistencies undermine the MND’s conclusions, as CalEEMod uses the operational vehicle trip rates to calculate the emissions associated with the Project’s operational on-road vehicles.¹³² Thus, by including underestimated operational vehicle trip rates, SWAPE concludes that the model underestimates the

¹³¹ MND, Appendix A, pp. 21, 46

¹³² “CalEEMod User Guide.” CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 35; SWAPE comments, page 6.

Project's mobile-source operational emissions and should not be relied upon to determine Project significance.

Third, SWAPE's review of the CalEEMod output files demonstrates that the "Rendon Hotel Project" model includes several manual changes to the default operational vehicle trip types and lengths (see excerpt below) (Appendix A, pp. 5, 30).

Table Name	Column Name	Default Value	New Value
tblVehicleTrips	CC_TL	8.40	6.77
tblVehicleTrips	CC_TTP	61.60	100.00
tblVehicleTrips	CNW_TL	6.90	0.00
tblVehicleTrips	CNW_TTP	19.00	0.00
tblVehicleTrips	CW_TL	16.60	0.00
tblVehicleTrips	CW_TTP	19.40	0.00

As SWAPE explains, the MND's emissions modeling assumes that 100% of the Project's trips would be commercial to the customer ("C-C") with a trip length of 6.77 miles, without explanation, as required by the CalEEMod User's Guide.¹³³ SWAPE determines that, according to the "User Entered Comments and Non-Default Data" table, the justification provided for these changes is: "Trip rates adjusted based on LADOT VMT Calculator provided by Traffic Consultant."¹³⁴

However, SWAPE concludes that these changes remain unsupported for two reasons. First, while the justification provided by the "User Entered Comments and Non-Default Data" table addresses the revisions to the operational vehicle trip *rates*, it fails to address the revised operational vehicle trip *types* or *lengths*. Second, the MND and associated appendices fail to mention or substantiate the revised operational vehicle trip types and lengths whatsoever.¹³⁵

These unsubstantiated changes render the MND's emissions modeling unsupported. As SWAPE explains, CalEEMod uses the operational vehicle trip types and lengths to calculate the emissions associated with the Project's

¹³³ "CalEEMod User Guide." CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 2, 9.

¹³⁴ MND Appendix A, pp. 4, 29.

¹³⁵ SWAPE comments, p. 7.

operational on-road vehicles.¹³⁶ By including unsubstantiated changes to the default operational vehicle trip types and lengths, SWAPE concludes that the MND's emissions modeling may underestimate the Project's mobile-source operational emissions and should not be relied upon to determine the significance of the Project's operational vehicle emissions.

The MND lacks substantial evidence to support its conclusion that the Project will result in less than significant transportation impacts. By contrast, there is substantial evidence supporting a fair argument that the MND underestimates and fails to properly mitigate transportation impacts on the Project Site.

H. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Land Use Impacts

1. The MND Fails to Establish Consistency With Applicable Zoning Regulations

The MND fails to analyze the Project's consistency with mandatory requirements under Land Use and Zoning Requirements Zoning Information-2784. The Project has five separate applicable zoning information is attached to its site: ZI-2353, ZI-2487, ZI-2488, ZI-2358, and ZI-2129, but only references four of these five.¹³⁷ The MND fails to include a discussion of ZI-2487 City Center/Central Ind. Dev. Guidelines & Controls for Residential Hotels and how the Project meets these requirements and particularly the DFD as noted in ZI-2487. The DFD prohibits the demolition, rehabilitation, or conversion of Residential Hotel Unit(s), or the construction of any new development on the site of a destroyed or demolished Residential Hotel unless the applicant complies with the provisions of the DFD.¹³⁸

Where a local or regional policy of general applicability, such as an ordinance, or in this case a zoning information is adopted to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment.¹³⁹ Any inconsistencies between a proposed project and

¹³⁶ "CalEEMod User Guide." CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 35.

¹³⁷ MND, p. 15; See also MND, pp.125-133.

¹³⁸ Los Angeles Zoning Information, ZI-2487, available at: <http://zimas.lacity.org/documents/zoneinfo/ZI2487.pdf>.

¹³⁹ *Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903. 5078-001acp

applicable plans must be discussed in the CEQA document.¹⁴⁰ A Project's inconsistencies with local plans and policies constitute significant impacts under CEQA.¹⁴¹ Given the MND's failure to demonstrate that the Project complies with the DFD currently ZI-2487 conflicts with the Project.

2. The MND Fails to Demonstrate Compliance with Land Use Standards for Parking

The MND fails to explain how the Project's proposed Zone Variance for offsite parking will meet all the required land use and planning requirements related to parking. In particular, the MND fails to discuss how the Green Building codes requirements for EV spaces will be met by moving parking offsite. The MND Energy and Transportation sections currently fail to account for EV parking. Combined with the fact that so little is mentioned regarding the Project's proposed offsite parking agreement, the lack of information in the MND makes it impossible to tell whether EV parking would be contemplated at all by the offsite agreement.

The LAMC specifies EV spots "at newly constructed hotels and motels shall be 30% of the total number of parking spaces provided, but in no case less than one, for all types of parking facilities."¹⁴² No mention of this requirement is contained in any of the MND's discussions regarding an offsite parking agreement.¹⁴³ The City must provide this basic information so the public and decision-makers can meaningfully assess the Project's potential land use impacts. Further, without this information, there is no support for the Applicant's conclusion that the Project's impacts to Land Use and Planning are less than significant.

The MND's conclusion that the Project will result in less than significant land use and planning impacts, with no mitigation required, is not supported by substantial evidence.¹⁴⁴ And absent mandatory conditions in the offsite parking agreement to require EV parking spaces which comply with LAMC requirements, it

¹⁴⁰ (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).)

¹⁴¹ (*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 (fact that a project may be consistent with a plan, such as an air plan, does not necessarily mean that it does not have significant impacts).)

¹⁴² See LAMC 99.04.106.4.3.1. New Hotels and Motels and MND pp. 81-90.

¹⁴³ MND, p. 133.

¹⁴⁴ See MND, MND p. 134.

5078-001acp

is likely that the Project would be inconsistent with City EV parking requirements, result in significant parking and land use impacts that are not disclosed in the MND.

VI. THE MND'S ANALYSIS OF CUMULATIVE IMPACTS IS INADEQUATE

CEQA requires an evaluation of cumulative impacts, defined as “two or more individual effects which, when considered together, are considerable.”¹⁴⁵ Such impacts may “result from individually minor but collectively significant projects taking place over a period of time.”¹⁴⁶ Lead agencies must consider whether a project’s potential impacts, although individually limited, are cumulatively considerable.¹⁴⁷ “Cumulatively considerable” under CEQA means that “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”¹⁴⁸

CEQA Guidelines section 15130(b)(1) provides two options for analyzing cumulative impacts: (A) list “past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency,” or (B) summarize a “projection contained in an adopted local, regional or statewide plan, or related planning document that describes or evaluates conditions contributing to the cumulative effect.”¹⁴⁹ “When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.”¹⁵⁰

This analysis necessarily requires the identification of other projects that will be constructed and/or operating over the same time period as the subject project and the analysis of these projects together with the project being reviewed. The MND fails to analyze the impacts the Project will have when considered with the more

¹⁴⁵ 14 C.C.R. § 15355.

¹⁴⁶ 14 C.C.R. § 15355(b).

¹⁴⁷ PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

¹⁴⁸ CEQA Guidelines §15064(h)(1).

¹⁴⁹ 14 C.C.R. § 15130(b)(1).

¹⁵⁰ *Id.*; *see id.* § 15130(a) (stating that the lead agency shall describe its basis for concluding that an incremental effect is not cumulatively considerable).

5078-001acp

than 21 other projects within the vicinity that are planned, have been completed, or are under construction.¹⁵¹

A. The MND Fails to Disclose, Analyze, and Mitigate Potentially Significant Cumulative Impacts to Air Quality, GHG emissions, and Transportation

The MND incorrectly concludes that the Project's cumulative air quality impacts are insignificant because they are incrementally minor.¹⁵² A CEQA document is required to disclose a significant cumulative impact "when the project's incremental effect is cumulatively considerable."¹⁵³ The MND finds the Project's cumulative impacts from construction and operational emissions to be insignificant simply because the Project's individual emissions (i.e. its incremental effect) fall below SCAQMD localized and regional significance thresholds.¹⁵⁴ However, the MND fails to take the second step required in the cumulative impacts analysis, which is to compare the Project's individual emissions with those of other reasonably foreseeable cumulative projects to determine whether the increase in emissions caused by the Project will cause cumulatively considerable increases in the specific pollutants emitted by the Project.

The MND states:

Therefore, according to the SCAQMD, individual development projects that generate construction or operational emissions that exceed the SCAQMD recommended daily thresholds for project-specific impacts would also cause a cumulatively considerable increase in emissions for those pollutants for which the Basin is in non-attainment. Thus, as discussed in response to Checklist Question III (c) above, because the construction-related and operational daily emissions associated with Proposed Project would not exceed the SCAQMD's recommended thresholds, these emissions associated with the Proposed Project would not be cumulatively

¹⁵¹ MND, pp. 60-70.

¹⁵² MND, pp. 60-70.

¹⁵³ 14 CCR § 15130(a).

¹⁵⁴ MND, pp.70-71.

5078-001acp

considerable. Therefore, cumulative air quality impacts would be less than significant.¹⁵⁵

The MND identifies 21 others recently approved or under-construction “Related Projects” that are in the direct vicinity of the Project site.¹⁵⁶ However, the “Cumulative Impacts” discussion in the MND’s Air Quality section fails to mention any of these projects and fails to make any attempt to compare the Project’s emissions with those of the other Related Projects. The result is a complete dismissal of the Project’s cumulative air quality impacts by claiming that they are a “drop in a bucket” compared with other existing regional impacts. This approach has been rejected by the Courts and fails to comply with CEQA’s requirement that a project mitigate impacts that are “cumulatively considerable.”¹⁵⁷

In *Friends of Oroville*, the City of Oroville prepared an EIR for a retail center project. The EIR failed to analyze the project’s cumulative contribution to significant GHG impacts by concluding, without analysis, that the project’s “miniscule” GHG emissions were insignificant in light of the state’s cumulative, state-wide GHG emissions problem. The EIR had concluded that a further analysis of the project’s GHG impacts would result in “applying a meaningless, relative number to determine an insignificant impact.”¹⁵⁸ The court of appeal rejected what amounted to an outright dismissal of the City’s obligation to analyze the retail center’s cumulative GHG impacts.¹⁵⁹

Similarly, in *Kings County Farm Bureau v. City of Hanford*,¹⁶⁰ the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for PM10 and ozone, the City failed to incorporate mitigations for the project’s cumulative air quality impacts from project emissions because it concluded that the Project would contribute “less than one percent of area emissions for all criteria pollutants.”¹⁶¹ The city reasoned that, because the project’s air emissions were small in comparison to existing air quality problems, that this necessarily

¹⁵⁵ MND, pp.70-71

¹⁵⁶ MND, pp. 45-50.

¹⁵⁷ PRC § 21083(b)(2); 14 CCR § 15130; *Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 721.

¹⁵⁸ 219 Cal. App. 4th at 841-42.

¹⁵⁹ *Id.*

¹⁶⁰ (1990) 221 Cal. App. 3d 692, 721.

¹⁶¹ *Id.* at 719.

5078-001acp

rendered the project's "incremental contribution" minimal under CEQA. The court rejected this approach, finding it "contrary to the intent of CEQA."

By contrast, a lead agency must find that a project may have a significant effect on the environment and must therefore require an EIR if the project's potential environmental impacts, although individually limited, are cumulatively considerable.¹⁶² The term "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."¹⁶³ The SCAQMD CEQA Guidelines similarly explain that "[w]hile one insignificant project may not affect air quality, the cumulative effect of numerous smaller projects may." To address this problem, SCAQMD recommends that individual project air emissions "be examined within the scope of the existing setting and that the examination take into account new and planned similar and nearby projects."¹⁶⁴

The City cannot end its cumulative impacts analysis at the same point at which it ended its direct impacts analysis – i.e., when it determines whether or not the project will individually cause significant air emissions. That is not the intent of the cumulative impacts' analysis. Rather, the City must attempt to determine whether the Project's emissions, when combined with other similar emissions from other projects, may be significant. Under CEQA, if an adjacent project has significant air emissions, but the proposed project does not, the proposed project may still be considered to have significant cumulative impacts if its own emissions contribute to a cumulative exceedance of a particular pollutant.¹⁶⁵ The same is true for projects which may have individually insignificant impacts, but which, when combined, result in a significant impact.¹⁶⁶ The MND fails to undertake that analysis at all.

¹⁶² PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

¹⁶³ PRC § 21083(b)(2).

¹⁶⁴ See excerpts from SCAQMD Air Quality Handbook, p. 7-3, attached hereto as Exhibit H, available at: http://www.energy.ca.gov/sitingcases/ivanpah/documents/others/2009-08-12_Attachemt_AQ1-1_CEQA_Air_Quality_Handbook_TN-47534.PDF; SCAQMD discussion of currentness of Air Quality Handbook, at <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook>.

¹⁶⁵ PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3), 15130(a).

¹⁶⁶ *Id.*

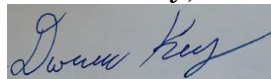
5078-001acp

VII. 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. 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 letters from SWAPE and Mr. Shaw. 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 attention to these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darien Key", is written over a light blue rectangular background.

Darien Key

DKK:acp
Attachment

ATTACHMENT A



Technical Consultation, Data Analysis and
Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G, C.Hg.
(949) 887-9013
mhagemann@swape.com

Paul E. Rosenfeld, PhD
(310) 795-2335
prosenfeld@swape.com

February 25, 2021

Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd #1000
South San Francisco, CA 94080

Subject: Comments on Rendon Hotel Project (Case Number: ENV-2017-4735-MND)

Dear Ms. Caro,

We have reviewed the February 2021 Initial Study/Mitigated Negative Declaration ("IS/MND") for the Rendon Hotel Project ("Project") located in the City of Los Angeles ("City"). The Project proposes a one-story addition to an existing three-story, 14,910-SF hotel, as well as the construction, use, and maintenance of an attached 15-story, 103-room hotel building and approximately 15,907-SF of commercial space, on the 0.26-acre site.

Our review concludes that the IS/MND fails to adequately evaluate the Project's hazards and hazardous materials, air quality, health risk, and greenhouse gas impacts. As a result, emissions and health risk impacts associated with construction and operation of the proposed Project are underestimated and inadequately addressed. An EIR should be prepared to adequately assess and mitigate the potential hazards and hazardous materials, air quality, health risk, and greenhouse gas impacts that the project may have on the surrounding environment.

Hazards and Hazardous Materials

Inadequate Analysis of Impacts

A Phase I Environmental Site Assessment (“ESA”) was not prepared for the Project site. The IS/MND found a less than significant impact based solely on a regulatory database search of the California Department of Toxics Substances Control Envirostor website¹ (p. 111).

A Phase I ESA is often included in CEQA documentation to identify hazardous materials issues that may pose a risk to the public, workers, or the environment, and which may require further investigation through the conduct of a Phase II ESA. Components of a Phase I include:

- a review of all known sites in the vicinity of the subject property that are on regulatory agency databases undergoing assessment or cleanup activities;
- an inspection;
- interviews with people knowledgeable about the property; and
- recommendations for further actions to address potential hazards.

Standards for performing a Phase I ESA have been established by the US EPA and the American Society for Testing and Materials Standards (ASTM).²

Phase I ESAs conclude with the identification of any “recognized environmental conditions” (RECs) and recommendations to address such conditions. A REC is the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property. If RECs are identified, then a Phase II ESA generally follows, which includes the collection of soil, soil vapor and groundwater samples, as necessary, to identify the extent of contamination and the need for cleanup to reduce exposure potential to the public.

A search of the Envirostor website, as performed for the IS/MND, is insufficient for determining Project impacts. Due diligence practices commonly used in CEQA proceedings include the preparation of a Phase I ESA, completed by a licensed environmental professional. The preparation of an EIR, to include a Phase I ESA, is necessary to identify recognized environmental conditions, if any, at the proposed Project site.

If a REC is identified, a Phase II should be conducted to sample for potential contaminants in soil, soil vapor and groundwater. Any contamination that is identified above regulatory screening levels, including California Office of Environmental Health Hazard Assessment’s Soil Screening Numbers³, should be further evaluated and cleaned up, if necessary, in coordination with the Regional Water Quality Control Board and the California Department of Toxics Substances Control.

¹ <https://www.envirostor.dtsc.ca.gov/public/>

² <http://www.astm.org/Standards/E1527.htm>

³ <http://oehha.ca.gov/risk/chhsltable.html>

Air Quality

Unsubstantiated Input Parameters Used to Estimate Project Emissions

The IS/MND's air quality analysis relies on emissions calculated with CalEEMod.2016.3.2 (p. 63).⁴

CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project-specific values, but the California Environmental Quality Act ("CEQA") requires that such changes be justified by substantial evidence.⁵ Once all of the values are inputted into the model, the Project's construction and operational emissions are calculated, and "output files" are generated. These output files disclose to the reader what parameters were utilized in calculating the Project's air pollutant emissions and make known which default values were changed as well as provide justification for the values selected.⁶

When reviewing the Project's CalEEMod output files, provided in the Air Quality Modeling Worksheets as Appendix A to the IS/MND, we found that several model inputs were not consistent with information disclosed in the IS/MND. As a result, the Project's construction and operational emissions are underestimated. An EIR should be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction and operation of the Project will have on local and regional air quality.

Failure to Model All Proposed Land Use Types

According to the IS/MND, the Project proposes to construct "15,907 square feet of commercial space comprised of art gallery, café, restaurant, and bar uses" (p. 22). As such, the models should have included at least 15,907-SF of commercial space. However, review of the CalEEMod output files demonstrates that the "Rendon Hotel Project" model fails to include the proposed commercial land use space (see excerpt below) (Appendix A, pp. 3, 28).

Land Uses	Size	Metric	Lot Acreage	Floor Surface Area
Hotel	103.00	Room	0.26	67,615.00

As you can see in the excerpt above, the model fails to distinguish between the hotel and commercial land uses. This inconsistency presents an issue, as CalEEMod includes 63 different land use types that are each assigned a distinctive set of energy usage emission factors.⁷ Furthermore, each land use type includes a specific trip rate that CalEEMod uses to calculate mobile-source emissions.⁸ Thus, by failing to

⁴ CAPCOA (November 2017) CalEEMod User's Guide, http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4.

⁵ CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 1, 9.

⁶ CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 11, 12 – 13. A key feature of the CalEEMod program is the "remarks" feature, where the user explains why a default setting was replaced by a "user defined" value. These remarks are included in the report.

⁷ "CalEEMod User's Guide, Appendix D." CAPCOA, September 2016, available at: http://www.aqmd.gov/docs/default-source/caleemod/upgrades/2016.3/05_appendix-d2016-3-1.pdf?sfvrsn=2.

⁸ CalEEMod User's Guide, available at: http://www.aqmd.gov/docs/default-source/caleemod/upgrades/2016.3/01_user-39-s-guide2016-3-1.pdf?sfvrsn=2, p. 14.

include all proposed land use types, the model may underestimate the Project’s construction-related and operational emissions and should not be relied upon to determine Project significance.

Unsubstantiated Reduction to Acres of Grading Value

Review of the CalEEMod output files demonstrates that the “Rendon Hotel Project” model includes a reduction to the default acres of grading value (see excerpt below) (Appendix A, pp. 4, 29).

Table Name	Column Name	Default Value	New Value
tblGrading	AcresOfGrading	22.00	0.26

As you can see in the excerpt above, the acres of grading value was reduced by approximately 99%, from the default value of 22.00- to 0.26-acres. As previously mentioned, the CalEEMod User’s Guide requires any changes to model defaults be justified.⁹ According to the “User Entered Comments & Non-Default Data” table, the justification provided for these changes is: “Estimates approximately 2,500 cy export for one-level subterranean” (Appendix A, pp. 4, 29).

However, this change remains unsupported for three reasons. First, the justification provided by the “User Entered Comments & Non-Default Data” table fails to address the revised acres of grading value. Second, the IS/MND and associated documents fail to mention or justify this change. Third, according to the CalEEMod User’s Guide:

“[T]he dimensions (e.g., length and width) of the grading site have no impact on the calculation, only the total area to be graded. In order to properly grade a piece of land multiple passes with equipment may be required. The acres is based on the equipment list and days in grading or site preparation phase according to the anticipated maximum number of acres a given piece of equipment can pass over in an 8-hour workday.”¹⁰

Thus, as the dimensions of the Project site have no impact on the acres of grading value, and the IS/MND fails to substantiate this change, we cannot verify the revised acres of grading value.

This unsubstantiated reduction presents an issue, as CalEEMod uses the acres of grading value to estimate the dust emissions associated with grading.¹¹ Thus, by including an unsubstantiated reduction to the default acres of grading value, the model may underestimate the Project’s construction-related emissions and should not be relied upon to determine Project significance.

⁹ CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 2, 9

¹⁰ “Appendix A Calculation Details for CalEEMod.” available at: http://www.agmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 9.

¹¹ “Appendix A Calculation Details for CalEEMod.” available at: http://www.agmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 9.

Unsubstantiated Reduction to Default Demolition Hauling Trip Number

Review of the CalEEMod output files demonstrates that the “Rendon Hotel Project” model includes a manual reduction to the default number of hauling trips required for demolition (see excerpt below) (Appendix A, pp. 5, 30).

Table Name	Column Name	Default Value	New Value
tblTripsAndVMT	HaulingTripNumber	25.00	16.00

As you can see in the excerpt above, the default demolition hauling trip number was manually reduced. As previously mentioned, the CalEEMod User’s Guide requires any changes to model defaults be justified.¹² According to the “User Entered Comments and Non-Default Data” table, the justification provided for these changes is: “Assumes 14 haul truck capacity and average 30 miles to disposal site” (Appendix A, pp. 4, 29). Furthermore, the IS/MND states:

“It is anticipated that 14 cy capacity haul trucks would be used to export soil, resulting in a total of approximately 358 haul round trips, or approximately eight round trips per day” (p. 147).

However, these justifications are insufficient for two reasons. First, the IS/MND fails to provide the number of hauling trips anticipated for demolition. Second, the IS/MND provides the amount of construction and demolition debris in tons, rather than cubic yards (“cy”) (see excerpt below) (p. 193, Table 4.27).

Table 4.27
Estimated Construction and Demolition Debris

Construction Activity	Size	Rate ^a	Generated Waste (tons)
Demolition			
Surface Asphalt	5,500 sf ^b	2,400 lbs/cy	122
Construction			
Hotel	51,708 sf	4.38 lbs/sf	113
Commercial	15,907 sf	3.89 lbs/sf	31
Total Debris:			266

As a result, we cannot verify the revised demolition hauling trip number based on a 14 cy haul truck capacity, and the change is unsubstantiated.

This unsubstantiated reduction presents an issue, as CalEEMod uses number of hauling trips to estimate the construction-related emissions associated with on-road vehicles.¹³ Thus, by including an unsubstantiated reduction to the default demolition hauling trip number, the model may underestimate the Project’s mobile-source construction-related emissions and should not be relied upon to determine Project significance.

¹² CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 2, 9

¹³ CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 34.

Use of Underestimated Operational Vehicle Trip Rates

According to the Transportation Study, provided as Appendix G to the IS/MND, the Project is expected to generate approximately 732 average daily vehicle trips (see excerpt below) (Appendix G, p. 32).

Table 6
Project Weekday Trip Generation Summary¹

Land Use	ITE Code	Intensity ²	Average Weekday	AM Peak Hour			PM Peak Hour		
				In	Out	Total	In	Out	Total
Trip Generation Rates									
Hotel	310	1 rm	8.38	59%	41%	0.47	51%	49%	0.60
Trip Generation Summary									
Description	Size	Average Weekday	AM Peak Hour			PM Peak Hour			
			In	Out	Total	In	Out	Total	
PROPOSED USE									
Lodging									
Hotel	103 rm	881	28	20	48	32	30	62	
15% Transit/Walk Adjustment ³		(129)	(4)	(3)	(7)	(5)	(4)	(9)	
Proposed Project Trips		732	24	17	41	27	26	53	

As such, the model for the proposed land uses should have included trip rates that reflect the number of average daily operational vehicle trips anticipated. However, review of the CalEEMod output files demonstrates that the “Rendon Hotel Project” model includes only 494.40, 495.43, and 360.50 weekday, Saturday, and Sunday average vehicle trips, respectively (Appendix A, pp. 21, 46).

Land Use	Average Daily Trip Rate		
	Weekday	Saturday	Sunday
Hotel	494.40	495.43	360.50
Total	494.40	495.43	360.50

As you can see in the excerpt above, the weekday, Saturday, and Sunday trip numbers are underestimated by approximately 238, 237, and 372 trips, respectively. As such, the trip rates inputted into the proposed land use models are underestimated and inconsistent with the information provided by the IS/MND.

These inconsistencies present an issue, as CalEEMod uses the operational vehicle trip rates to calculate the emissions associated with the Project’s operational on-road vehicles.¹⁴ Thus, by including underestimated operational vehicle trip rates, the model underestimates the Project’s mobile-source operational emissions and should not be relied upon to determine Project significance.

Unsubstantiated Changes to Operational Vehicle Trip Types and Lengths

Review of the CalEEMod output files demonstrates that the “Rendon Hotel Project” model includes several manual changes to the default operational vehicle trip types and lengths (see excerpt below) (Appendix A, pp. 5, 30).

¹⁴ “CalEEMod User Guide.” CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 35.

Table Name	Column Name	Default Value	New Value
tblVehicleTrips	CC_TL	8.40	6.77
tblVehicleTrips	CC_TTP	61.60	100.00
tblVehicleTrips	CNW_TL	6.90	0.00
tblVehicleTrips	CNW_TTP	19.00	0.00
tblVehicleTrips	CW_TL	16.60	0.00
tblVehicleTrips	CW_TTP	19.40	0.00

As you can see in the excerpt above, the model assumes that 100% of the Project's trips would be commercial to customer ("C-C") with a trip length of 6.77 miles. As previously mentioned, the CalEEMod User's Guide requires any changes to model defaults be justified.¹⁵ According to the "User Entered Comments and Non-Default Data" table, the justification provided for these changes is: "Trip rates adjusted based on LADOT VMT Calculator provided by Traffic Consultant" (Appendix A, pp. 4, 29).

However, these changes remain unsupported for two reasons. First, while the justification provided by the "User Entered Comments and Non-Default Data" table addresses the revisions to the operational vehicle trip rates, it fails to address the revised operational vehicle trip types or lengths. Second, the IS/MND and associated appendices fail to mention or substantiate the revised operational vehicle trip types and lengths whatsoever.

These unsubstantiated changes present an issue, as CalEEMod uses the operational vehicle trip types and lengths to calculate the emissions associated with the Project's operational on-road vehicles.¹⁶ Thus, by including unsubstantiated changes to the default operational vehicle trip types and lengths, the model may underestimate the Project's mobile-source operational emissions and should not be relied upon to determine Project significance.

Incorrect Application of Operational Mitigation Measures

Review of the CalEEMod output files demonstrates that the "Rendon Hotel Project" model includes the following area-, water-, and waste-related operational mitigation measures (see excerpts below) (Appendix A, pp. 23, 25, 48, 50):

Area-Related:

6.1 Mitigation Measures Area

No Hearths Installed
Use Low VOC Cleaning Supplies

¹⁵ "CalEEMod User Guide." CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 2, 9.

¹⁶ "CalEEMod User Guide." CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 35.

Water-Related:

7.1 Mitigation Measures Water

Apply Water Conservation Strategy
Install Low Flow Bathroom Faucet
Install Low Flow Kitchen Faucet
Install Low Flow Toilet
Install Low Flow Shower

Waste-Related:

8.1 Mitigation Measures Waste

Institute Recycling and Composting Services

As previously mentioned, the CalEEMod User's Guide requires any change to model defaults be justified.¹⁷ However, the "User Entered Comments & Non-Default Data" table fails to provide justifications for the inclusion of the above-mentioned area-, water-, and waste-related operational mitigation measures (Appendix A, pp. 4, 29). Furthermore, regarding the Project's compliance with measures and design features, the IS/MND states:

"The following describes the benefits and applicability of the Proposed Project's compliance measures and design features that serve to reduce the carbon footprint of the development...

Solid Waste Reduction Efforts. L.A. Green Building Code Section 5.408.1 and LAMC Section 66.32 require the construction contractor to obtain an AB 939 Compliance Permit certifying the delivery of the construction and demolition waste to a certified construction and demolition waste processing facility. Diversion efforts would be accomplished through source reduction, recycling, and composting. Finally, the Proposed Project is required by the California Solid Waste Reuse and Recycling Access Act of 1991 to provide adequate storage areas for collection and storage of recyclable waste materials. As such, a 50 percent reduction of a Project's waste stream to the local landfill would reduce methane emissions and thus lower the Project's contribution to global GHG emissions.

Water Conservation. As mandated by the L.A. Green Building Code, the Proposed Project would be required to provide separate submeters for individual leased, rented or other tenant spaces projected to consume more than 100 gallons per day and any building or addition that is

¹⁷ CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 2, 9

projected to consume more than 1,000 gallons per day. Plumbing fixtures would need to comply with one of the following: (1) a 20% reduction in the building's "water use baseline" as demonstrated in Table 5.303.2.2 of the Los Angeles Plumbing Code; or (2) comply with the maximum flow rates shown in Table 5.303.2.3 of the Plumbing Code. The Project would also be required to develop a water budget for landscape irrigation use and install automatic irrigation systems with weather or soil moisture-based controllers" (p.

However, the inclusion of these measures remains unsubstantiated for two reasons.

First, the IS/MND and associated documents fail to mention that the Project would use low VOC cleaning supplies and not include hearths.

Second, simply because the IS/MND states that the Project would comply with the L.A. Green Building Code does not justify the inclusion of the above-mentioned water- and waste-related mitigation measures in the model. According to the Association of Environmental Professionals' ("AEP") *CEQA Portal Topic Paper* on mitigation measures:

"By definition, mitigation measures are not part of the original project design. Rather, mitigation measures are actions taken by the lead agency to reduce impacts to the environment resulting from the original project design. Mitigation measures are identified by the lead agency after the project has undergone environmental review and are above-and-beyond existing laws, regulations, and requirements that would reduce environmental impacts" (emphasis added).¹⁸

As you can see in the excerpt above, mitigation measures "are not part of the original project design" and are intended to go "above-and-beyond" existing regulatory requirements. Furthermore, the report states:

"While not "mitigation", a good practice is to include those project design feature(s) that address environmental impacts in the mitigation monitoring and reporting program (MMRP). Often the MMRP is all that accompanies building and construction plans through the permit process. If the design features are not listed as important to addressing an environmental impact, it is easy for someone not involved in the original environmental process to approve a change to the project that could eliminate one or more of the design features without understanding the resulting environmental impact" (emphasis added).¹⁹

As you can see in the excerpts above, project design features are not mitigation measures and may be eliminated from the Project's design. Thus, as the above-mentioned area-, water-, and waste-related operational mitigation measures are not formally included as mitigation measures, we cannot guarantee that they would be implemented, monitored, and enforced on the Project site. By incorrectly including

¹⁸ "CEQA Portal Topic Paper Mitigation Measures." AEP, February 2020, available at: <https://cegaportal.org/tp/CEQA%20Mitigation%202020.pdf>, p. 5.

¹⁹ "CEQA Portal Topic Paper Mitigation Measures." AEP, February 2020, available at: <https://cegaportal.org/tp/CEQA%20Mitigation%202020.pdf>, p. 6.

several area-, water-, and waste-related operational mitigation measures, the model underestimates the Project's operational emissions and should not be relied upon to determine Project significance.

Diesel Particulate Matter Health Risk Emissions Inadequately Evaluated

The IS/MND concludes that the proposed Project would have a less-than-significant health risk impact, without conducting a quantified construction or operational health risk analysis ("HRA") (p. 89).

Specifically, regarding the potential health risk impacts associated with Project construction, the IS/MND states:

"Given the short-term construction schedule of approximately 18 months, the Proposed 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 (18 out of 840 months of a 70-year lifetime), health risks associated with DPM emissions during construction would be less than significant. Moreover, the Proposed Project would be required to comply with the CARB Air Toxics Control Measure that limits diesel powered equipment and vehicle idling to no more than 5 minutes at a location. In addition, as discussed above, the Proposed Project would not result in a localized significant impact. Therefore, the Proposed Project would result in a less than significant impact related to construction TACs" (p. 69).

As demonstrated above, the IS/MND concludes that the Project would result in a less-than-significant impact with respect to construction-related toxic air contaminants ("TACs"), because construction would be short-term, the Project would be required to comply with the CARB Air Toxics Control Measure, and the Project's localized emissions would be less than significant. Furthermore, regarding the potential health risk impacts associated with Project operation, the IS/MND states:

"The Proposed Project consists of a hotel development. These uses would not support any land uses or activities that would involve the use, storage, or processing of carcinogenic or noncarcinogenic toxic air contaminants. As such, no significant toxic airborne emissions would result from Proposed Project implementation... Therefore, impacts associated with the release of toxic air contaminants would be less than significant" (p. 69).

As demonstrated above, the IS/MND concludes that the Project would result in a less-than-significant impact with respect to operational TACs, because the proposed land uses "would not support any land uses or activities that would involve the use, storage, or processing of carcinogenic or noncarcinogenic toxic air contaminants" (p. 69). However, the IS/MND's evaluation of the Project's potential health risk impacts, as well as the subsequent less-than-significant impact conclusion, is incorrect for four reasons.

First, the use of the LST method to determine the Project's health risk impacts on nearby, existing sensitive receptors is incorrect. While the LST method assesses the impact of pollutants at a local level, it only evaluates impacts from criteria air pollutants. According to the *Final Localized Significance Threshold Methodology* document prepared by the SCAQMD, the LST analysis is only applicable to NO_x,

CO, PM₁₀, and PM_{2.5} emissions, which are collectively referred to as criteria air pollutants.²⁰ Because the LST method can only be applied to criteria air pollutants, this method cannot be used to determine whether emissions from TACs, specifically diesel particulate matter (“DPM”), a known human carcinogen, will result in a significant health risk impact to nearby sensitive receptors. As a result, health impacts from exposure to TACs, such as DPM, were not analyzed, thus leaving a gap in the IS/MND’s analysis.

Second, despite the IS/MND’s qualitative claims that construction-related TAC emissions would be less than significant, construction of the proposed Project will produce emissions of DPM through the exhaust stacks of construction equipment over a potential construction period of approximately 18 months (p. 44). Furthermore, despite the IS/MND’s qualitative claim that the proposed land uses would not generate TACs, the Transportation Study indicates that the proposed land uses are expected to generate approximately 732 average daily vehicle trips, which will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions (Appendix G, p. 32). However, the IS/MND’s vague discussion of potential Project-generated TACs fails to indicate the concentrations at which such pollutants would trigger adverse health effects. Thus, without making a reasonable effort to connect the Project’s construction-related and operational TAC emissions to the potential health risks posed to nearby receptors, the IS/MND is inconsistent with CEQA’s requirement to correlate the increase in emissions generated by the Project with the potential adverse impacts on human health.

Third, by concluding that the Project would result in a less-than-significant health risk impact without preparing a quantified construction operational HRA for the Project, the IS/MND is inconsistent with the most recent guidance published by the Office of Environmental Health Hazard Assessment (“OEHHA”), the organization responsible for providing guidance on conducting HRAs in California. OEHHA released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments* in February 2015.²¹ This guidance document describes the types of projects that warrant the preparation of an HRA. The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.²² As the Project’s proposed 18-month construction duration vastly exceeds the 2-month requirement set forth by OEHHA, it is clear that the Project meets the threshold warranting a quantified HRA under OEHHA guidance (p. 44). Furthermore, the OEHHA document recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (“MEIR”).²³ Even though we were not provided with the expected lifetime of the Project, we can

²⁰ “Final Localized Significance Threshold Methodology.” SCAQMD, Revised July 2008, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/final-lst-methodology-document.pdf>.

²¹ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/hotspots2015.html

²² “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-18

²³ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, we recommend that health risk impacts from Project operation also be evaluated, as a 30-year exposure duration vastly exceeds the 6-month requirement set forth by OEHHA. These recommendations reflect the most recent state health risk policies, and as such, we recommend that an analysis of health risk impacts posed to nearby sensitive receptors from Project operation be included in an EIR for the Project.

Fourth, by claiming a less than significant impact without conducting a quantified construction or operational HRA for nearby, existing sensitive receptors, the IS/MND fails to compare the excess health risk impact to the applicable SCAQMD numeric threshold of 10 in one million, and lacks evidence to support its conclusion that the health risk would be under the threshold.²⁴ Thus, pursuant to CEQA, an analysis of the health risk posed to nearby, existing receptors from Project construction and operation should have been conducted.

Screening-Level Analysis Indicates a Potentially Significant Health Risk Impact

In order to conduct our screening-level risk analysis we relied upon AERSCREEN, which is a screening level air quality dispersion model.²⁵ The model replaced SCREEN3, and AERSCREEN is included in the OEHHA²⁶ and the California Air Pollution Control Officers Associated (“CAPCOA”)²⁷ guidance as the appropriate air dispersion model for Level 2 health risk screening analyses (“HRSAs”). A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.

We prepared a preliminary HRA of the Project’s construction and operational health-related impact to residential sensitive receptors using the annual PM₁₀ exhaust estimates from the IS/MND’s CalEEMod output files. Consistent with recommendations set forth by OEHHA, we assumed residential exposure begins during the third trimester stage of life. The IS/MND’s CalEEMod model indicates that construction activities will generate approximately 157 pounds of DPM over the 547-day construction period. The AERSCREEN model relies on a continuous average emission rate to simulate maximum downward concentrations from point, area, and volume emission sources. To account for the variability in equipment usage and truck trips over Project construction, we calculated an average DPM emission rate by the following equation:

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{157.2 \text{ lbs}}{547 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = \mathbf{0.00151 \text{ g/s}}$$

²⁴ “South Coast AQMD Air Quality Significance Thresholds.” SCAQMD, April 2019, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf>.

²⁵ U.S. EPA (April 2011) AERSCREEN Released as the EPA Recommended Screening Model, http://www.epa.gov/ttn/scram/guidance/clarification/20110411_AERSCREEN_Release_Memo.pdf

²⁶ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf

²⁷ CAPCOA (July 2009) Health Risk Assessments for Proposed Land Use Projects, http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf.

Using this equation, we estimated a construction emission rate of 0.00151 grams per second (“g/s”). Subtracting the 547-day construction period from the total residential duration of 30 years, we assumed that after Project construction, the sensitive receptor would be exposed to the Project’s operational DPM for an additional 28.5 years, approximately. The Project’s operational CalEEMod emissions indicate that operational activities will generate approximately 22 pounds of DPM per year throughout operation. Applying the same equation used to estimate the construction DPM rate, we estimated the following emission rate for Project operation:

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{22.4 \text{ lbs}}{365 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = \mathbf{0.000322 \text{ g/s}}$$

Using this equation, we estimated an operational emission rate of 0.000322 g/s. Construction and operational activity was simulated as a 0.26-acre rectangular area source in AERSCREEN with dimensions of 42 by 25 meters. A release height of three meters was selected to represent the height of exhaust stacks on operational equipment and other heavy-duty vehicles, and an initial vertical dimension of one and a half meters was used to simulate instantaneous plume dispersion upon release. An urban meteorological setting was selected with model-default inputs for wind speed and direction distribution.

The AERSCREEN model generates maximum reasonable estimates of single-hour DPM concentrations from the Project site. EPA guidance suggests that in screening procedures, the annualized average concentration of an air pollutant be estimated by multiplying the single-hour concentration by 10%.²⁸ According to the IS/MND, the nearest sensitive receptors are “the future multi-family residences located immediately to the north and west of the Project Site” (p. 66). Thus, the single-hour concentration estimated by AERSCREEN for Project construction is approximately 15.71 µg/m³ DPM at approximately 25 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 1.571 µg/m³ for Project construction at the MEIR. For Project operation, the single-hour concentration estimated by AERSCREEN is 3.355 µg/m³ DPM at approximately 25 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 0.3355 µg/m³ for Project operation at the MEIR.

We calculated the excess cancer risk to the MEIR using applicable HRA methodologies prescribed by OEHHA. Consistent with the 547-day construction schedule included in the Project’s CalEEMod output files, the annualized average concentration for Project construction was used for the entire third trimester of pregnancy (0.25 years) and the first 1.25 years of the infantile stage of life (0 – 2 years); and the annualized averaged concentration for operation was used for the remainder of the 30-year exposure period, which makes up the remaining 0.75 years of the infantile stage of life, the entire child stage of life (2 – 16 years), and the entire the adult stage of life (16 – 30 years).

²⁸ “Screening Procedures for Estimating the Air Quality Impact of Stationary Sources Revised.” EPA, 1992, *available at*: http://www.epa.gov/ttn/scram/guidance/guide/EPA-454R-92-019_OCR.pdf; *see also* “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf> p. 4-36.

Consistent with OEHHA guidance and recommended by the SCAQMD, BAAQMD, and SJVAPCD guidance, we used Age Sensitivity Factors (“ASF”) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.^{29, 30, 31} According to this guidance, the quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant) as well as multiplied by a factor of three during the child stage of life (2 – 16 years). We also included the quantified cancer risk without adjusting for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution in accordance with older OEHHA guidance from 2003. This guidance utilizes a less health protective scenario than what is currently recommended by SCAQMD, the air quality district with jurisdiction over the City, and several other air districts in the state. Furthermore, in accordance with the guidance set forth by OEHHA, we used the 95th percentile breathing rates for infants.³² Finally, according to SCAQMD guidance, we used a Fraction of Time At Home (“FAH”) Value of 1 for the 3rd trimester and infant receptors.³³ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days. The results of our calculations are shown below.

²⁹ “Draft Environmental Impact Report (DEIR) for the Proposed The Exchange (SCH No. 2018071058).” SCAQMD, March 2019, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2019/march/RVC190115-03.pdf?sfvrsn=8>, p. 4.

³⁰ “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 56; see also “Recommended Methods for Screening and Modeling Local Risks and Hazards.” BAAQMD, May 2011, *available at*: <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx>, p. 65, 86.

³¹ “Update to District’s Risk Management Policy to Address OEHHA’s Revised Risk Assessment Guidance Document.” SJVAPCD, May 2015, *available at*: <https://www.valleyair.org/busind/pto/staff-report-5-28-15.pdf>, p. 8, 20, 24.

³² “Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics ‘Hot Spots’ Information and Assessment Act,” July 2018, *available at*: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588supplementalguidelines.pdf>, p. 16.

“Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>

³³ “Risk Assessment Procedures for Rules 1401, 1401.1, and 212.” SCAQMD, August 2017, *available at*: http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1401/riskassessmentprocedures_2017_080717.pdf, p. 7.

The Maximum Exposed Individual at an Existing Residential Receptor (MEIR)

Activity	Duration (years)	Concentration (ug/m3)	Breathing Rate (L/kg-day)	Cancer Risk without ASFs*	ASF	Cancer Risk with ASFs*
Construction	0.25	1.571	361	2.1E-06	10	2.1E-05
3rd Trimester Duration	0.25			2.1E-06	3rd Trimester Exposure	2.1E-05
Construction	1.25	1.571	1090	3.2E-05	10	3.2E-04
Operation	0.75	0.3355	1090	4.1E-06	10	4.1E-05
Infant Exposure Duration	2.00			3.6E-05	Infant Exposure	3.6E-04
Operation	14.00	0.3355	572	4.0E-05	3	1.2E-04
Child Exposure Duration	14.00			4.0E-05	Child Exposure	1.2E-04
Operation	14.00	0.3355	261	1.3E-05	1	1.3E-05
Adult Exposure Duration	14.00			1.3E-05	Adult Exposure	1.3E-05
Lifetime Exposure Duration	30.00			9.2E-05	Lifetime Exposure	5.2E-04

* We, along with CARB and SCAQMD, recommend using the more updated and health protective 2015 OEHHA guidance, which includes ASFs.

As demonstrated in the table above, the excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 25 meters away, over the course of Project construction and operation, utilizing age sensitivity factors, are approximately 13, 120, 360, and 21 in one million, respectively. The excess cancer risk over the course of a residential lifetime (30 years), utilizing age sensitivity factors, is approximately 520 in one million. The 3rd trimester of pregnancy, infant, child, adult, and lifetime cancer risks exceed the SCAQMD threshold of 10 in one million, thus resulting in a potentially significant impact not previously addressed or identified by the IS/MND. Utilizing age sensitivity factors is the most conservative, health-protective analysis according to the most recent guidance by OEHHA and reflects recommendations from the air district. Results without age sensitivity factors are presented in the table above, although we **do not** recommend utilizing these values for health risk analysis. Regardless, the excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 25 meters away, over the course of Project construction and operation, without age sensitivity factors, are approximately 13, 40, 36, and 2.1 in one million, respectively. The excess cancer risk over the course of a residential lifetime (30 years), without age sensitivity factors, is approximately 92 in one million. The infant, child, adult, and lifetime cancer risk, without age sensitivity factors, exceed the SCAQMD threshold of 10 in one million, thus resulting in a potentially significant impact not previously addressed or identified by the IS/MND. While we recommend the use of age sensitivity factors, health risk impacts exceed the SCAQMD threshold regardless.

An agency must include an analysis of health risks that connects the Project's air emissions with the health risk posed by those emissions. Our analysis represents a screening-level HRA, which is known to be conservative and tends to err on the side of health protection.³⁴ The purpose of the screening-level construction and operational HRA shown above is to demonstrate the link between the proposed Project's emissions and the potential health risk. Our screening-level HRA demonstrates that construction and operation of the Project could result in a potentially significant health risk impact, when correct exposure assumptions and up-to-date, applicable guidance are used. Therefore, since our screening-level HRA indicates a potentially significant impact, the City should prepare a Project-specific EIR with an HRA which makes a reasonable effort to connect the Project's air quality emissions and the potential health risks posed to nearby receptors. Thus, the City should prepare an updated, quantified air pollution model as well as an updated, quantified refined health risk analysis which adequately and accurately evaluates health risk impacts associated with both Project construction and operation.

Greenhouse Gas

Failure to Adequately Evaluate Greenhouse Gas Impacts

The IS/MND estimates that the Project would generate net annual greenhouse gas ("GHG") emissions of 898.90 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year"), after the inclusion of GHG reduction measures (see excerpt below) (p. 104).

Table 4.9
Proposed Project Operational Greenhouse Gas Emissions

Emissions Source	Estimated Project Generated CO ₂ e Emissions (Metric Tons per Year)		
	Base Project Without GHG Reduction Features	Proposed Project	Percent Reduction ^a
Area	<0.01	<0.01	0%
Energy	373.08	373.08	0%
Mobile (Motor Vehicles)	591.04 ^{b,c}	473.98	20%
Stationary	4.59	4.59	0%
Waste	28.36	14.18	50%
Water	24.34	19.47	20%
Construction Emissions ^d	13.60	13.60	--
Total GHG Emissions:	1,035.01	898.90	13%
Notes: ^a The Percent Reduction is not a quantitative threshold of significance, but shows the efficacy of the Project's compliance with the various regulations, plans and policies that have been adopted with the intent of reducing GHG emissions. ^b Based on Proposed Project mobile source GHG emissions excluding Mitigation Measures and reduced VMT. ^c Calculated proportionately based on Proposed Project mobile trips with reductions 494 trips to trips without reductions 616 trips and multiplied with the GHG emissions of 473.98 MTCO ₂ e. ^d The total construction GHG emissions were amortized over 30 years and added to the operation of the Project. Calculation data and results provided in Appendix E, Greenhouse Gas Emissions Worksheets.			

³⁴ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>, p. 1-5

However, the IS/MND does not compare the Project's net annual GHG emissions estimates to a quantitative GHG threshold, stating:

"In the absence of any adopted numeric threshold, the significance of the Project's GHG emissions is evaluated consistent with CEQA Guidelines Section 15064.4(b)(2) by considering whether the Project complies with applicable plans, policies, regulations, and requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. For this Project, as a land use development project, the most directly applicable adopted regulatory plan to reduce GHG emissions is the 2020 RTP/SCS, which is designed to achieve regional GHG reductions from the land use and transportation sectors as required by SB 375 and the State's long-term climate goals. This analysis also considers consistency with regulations or requirements set forth by the 2008 Scoping Plan and subsequent updates SB 375, SCAG's 2020 RTP/SCS, and the L.A. Green Building Code" (p. 103).

As demonstrated in the excerpt above, the Project relies upon the Project's consistency with CARB's 2017 *Scoping Plan*, SB 375, SCAG's 2020 RTP/SCS, and the L.A. Green Building Code in order to conclude that the Project would result in a less-than-significant GHG impact. However, the IS/MND'S GHG analysis, as well as the subsequent less-than-significant impact conclusion, is incorrect for four reasons.

- (1) The IS/MND's quantitative GHG analysis relies upon an incorrect and unsubstantiated air model;
- (2) The IS/MND's unsubstantiated air model indicates a potentially significant impact;
- (3) The IS/MND fails to consider the performance-based standards under CARB's *Scoping Plan*; and
- (4) The IS/MND fails to consider the performance-based standards under SCAG's RTP/SCS.

1) Incorrect and Unsubstantiated Quantitative Analysis of Emissions

As previously stated, the IS/MND estimates that the Project would generate net annual GHG emissions of 898.90 MT CO₂e/year, after the inclusion of GHG reduction measures (p. 104). However, the IS/MND's quantitative GHG analysis is unsubstantiated. As previously discussed, when we reviewed the Project's CalEEMod output files, provided in the Greenhouse Gas Emissions Worksheets as Appendix E to the IS/MND, we found that several of the values inputted into the model are not consistent with information disclosed in the IS/MND. As a result, the model underestimates the Project's emissions, and the IS/MND's quantitative GHG analysis should not be relied upon to determine Project significance. An EIR should be prepared that adequately assesses the potential GHG impacts that construction and operation of the proposed Project may have on the surrounding environment.

2) Failure to Identify a Potentially Significant GHG Impact

The IS/MND's incorrect and unsubstantiated air model indicates a potentially significant GHG impact, when applying the widely-used 2030 "Substantial Progress" threshold of 660 MT CO₂e/year³⁵ and AEP

³⁵ See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, *available at*: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YlxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, *available at*: "SOLAR4AMERICA ICE

“2030 Land Use Efficiency Threshold” of 2.6 metric tons of carbon dioxide equivalents per service population per year (“MT CO₂e/SP/year”).³⁶ In support of thresholds for the 2030 target, AEP guidance states:

“Once the state has a full plan for 2030 (which is expected in 2017), and then a project with a horizon between 2021 and 2030 should be evaluated based on a threshold using the 2030 target. A more conservative approach would be to apply a 2030 threshold based on SB 32 for any project with a horizon between 2021 and 2030 regardless of the status of the Scoping Plan Update” (emphasis added).³⁷

As the California Air Resources Board (“CARB”) adopted *California’s 2017 Climate Change Scoping Plan* in November of 2017, the proposed Project “should be evaluated based on a threshold using the 2030 target,” according to the relevant guidance referenced above. Thus, in an effort to evaluate the Project’s GHG emissions quantitatively, we compared the Project’s GHG emissions, as estimated by the IS/MND, to the widely-used 2030 “Substantial Progress” threshold of 660 MT CO₂e/SP/year³⁸ and AEP “2030 Land Use Efficiency Threshold” of 2.6 MT CO₂e/SP/year.³⁹

As previously stated, the IS/MND estimates that the Project would generate net annual GHG emissions of 898.90 MT CO₂e/year (p. 104). Furthermore, according to CAPCOA’s *CEQA & Climate Change* report, service population is defined as “the sum of the number of residents and the number of jobs supported by the project.”⁴⁰ The IS/MND estimates that the Project would employ approximately 216 people upon buildout (p. 127). As the Project does not propose any residential land uses, we estimate a service population of 216 people.⁴¹ Dividing the Project’s GHG emissions, as estimated by the IS/MND, by a

FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT.” City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

³⁶ “Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California.” Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40.

³⁷ “Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California.” Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40.

³⁸ See: “JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT.” City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YixuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; “TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT.” City of Fremont, February 2020, available at: “SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT.” City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

³⁹ “Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California.” Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40.

⁴⁰ CAPCOA (Jan. 2008) *CEQA & Climate Change*, p. 71-72, <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf>.

⁴¹ Calculated: 216 employees + 0 residents = 216 service population.

service population value of 216 people, we find that the Project would emit approximately 4.2 MT CO₂e/SP/year (see table below).⁴²

IS/MND Modeling Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Net Annual GHG Emissions	899
Threshold	660
Exceed?	Yes
Service Population	216
Service Population Efficiency	4.2
Threshold	2.6
Exceed?	Yes

As demonstrated above, the Project’s estimated net annual GHG emissions and service population efficiency value exceed the 2030 “Substantial Progress” threshold of 660 MT CO₂e/SP/year and AEP’s “2030 Land Use Efficiency Threshold” of 2.6 MT CO₂e/SP/year, respectively. As a result, the IS/MND’s less-than-significant GHG impact conclusion should not be relied upon. An EIR should be prepared for the Project and mitigation measures should be implemented to reduce the Project’s GHG emissions to less-than-significant levels.

3) Failure to Consider Performance-Based Standards Under CARB’s 2017 Scoping Plan

As previously mentioned, the Project relies upon the Project’s consistency with CARB’s 2017 *Scoping Plan* in order to conclude that the Project would result in a less-than-significant GHG impact (p. 103). However, review of the Project documents demonstrates that the IS/MND fails to consider the performance-based standards under the CARB’s 2017 *Scoping Plan*.

i. Passenger & Light Duty VMT Per Capita Benchmarks per SB 375

In reaching the State’s long-term GHG emission reduction goals, CARB’s 2017 *Scoping Plan* explicitly cites to SB 375 and the VMT reductions anticipated under the implementation of Sustainable Community Strategies.⁴³ CARB has identified the population and daily VMT from passenger autos and light-duty vehicles at the state and county level for each year between 2010 to 2050 under a “baseline scenario” that includes “current projections of VMT included in the existing Regional Transportation Plans/Sustainable Communities Strategies (RTP/SCSs) adopted by the State’s 18 Metropolitan Planning Organizations (MPOs) pursuant to SB 375 as of 2015.”⁴⁴ By dividing the projected daily VMT by the population, we calculated the daily VMT per capita for each year at the state and county level for 2010

⁴² Calculated: (898.90 MT CO₂e/year) / (216 service population) = (4.2 MT CO₂e/SP/year).

⁴³ “California’s 2017 Climate Change Scoping Plan.” CARB, November 2017, *available at*: https://ww3.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf, p. 25, 98, 101-103.

⁴⁴ “Supporting Calculations for 2017 Scoping Plan-Identified VMT Reductions,” Excel Sheet “Readme.” CARB, January 2019, *available at*: https://ww2.arb.ca.gov/sites/default/files/2019-01/sp_mss_vmt_calculations_jan19_0.xlsx.

(baseline year), 2024 (Project operational year), and 2030 (target years under SB 32) (see table below and Attachment B).

2017 Scoping Plan Daily VMT Per Capita						
	Los Angeles County			State		
Year	Population	LDV VMT Baseline	VMT Per Capita	Population	LDV VMT Baseline	VMT Per Capita
2010	9,838,771	216,979,221.64	22.05	37,335,085	836,463,980.50	22.40
2024	10,627,846	219,237,756.72	20.63	41,994,283	926,776,780.89	22.07
2030	10,868,614	215,539,586.12	19.83	43,939,250	957,178,153.20	21.78

The below table compares the 2017 *Scoping Plan* daily VMT per capita values against the daily VMT per capita values for the Project based on the SWAPE's updated modeling (see table below and Attachment B).

Daily VMT Per Capita from Passenger & Light-Duty Trucks, Exceedances under 2017 Scoping Plan Performance-Based SB 375 Benchmarks	
Sources	SWAPE Modeling
Annual VMT from Auto & Light-Duty Vehicles	2,360,016
Daily VMT from Auto & Light-Duty Vehicles	6,466
Service Population	216
Daily VMT Per Capita	29.93
2017 Scoping Plan Benchmarks, Statewide	
22.40 VMT (2010 Baseline) Exceed?	Yes
22.07 VMT (2024 Projected) Exceed?	Yes
21.78 VMT (2030 Projected) Exceed?	Yes
2017 Scoping Plan Benchmarks, Los Angeles County Specific	
22.05 VMT (2010 Baseline) Exceed?	Yes
20.63 VMT (2024 Projected) Exceed?	Yes
19.83 VMT (2030 Projected) Exceed?	Yes

As shown above, the SWAPE's updated modeling estimates that the Project exceeds the CARB 2017 *Scoping Plan* projections for 2010, 2024, and 2030. Because the Project exceeds the CARB 2017 *Scoping Plan* performance-based daily VMT per capita projections, the Project conflicts with the CARB 2017 *Scoping Plan*. As such, a Project-specific EIR should be prepared for the proposed Project to provide additional information and analysis demonstrating that the Project would result in a less-than-significant GHG impact.

4) Failure to Consider Performance-based Standards under SCAG's RTP/SCS

As previously mentioned, the Project relies upon the Project's consistency with SCAG's 2020-2045 RTP/SCS in order to conclude that the Project would result in a less-than-significant GHG impact (p. 103). However, review of the Project documents demonstrates that the IS/MND fails to consider the performance-based standards under SCAG's 2020-2045 RTP/SCS, such as: i) per capita GHG emission targets, or ii) daily vehicle miles traveled ("VMT") per capita benchmarks.

i. SB 375 Per Capita GHG Emission Goals

SB 375 was signed into law in September 2008 to enhance the state's ability to reach AB 32 goals by directing CARB to develop regional 2020 and 2035 GHG emission reduction targets for passenger vehicles (autos and light-duty trucks). In March 2018, CARB adopted updated regional targets requiring a 19 percent decrease in VMT for the SCAG region by 2035. This goal is reflected in SCAG's 2020 RTP/SCS Program Environmental Impact Report ("PEIR"),⁴⁵ in which the 2020 RTP/SCS PEIR updates the per capita emissions to 21.3 lbs/day in 2020 and 18.8 lbs/day in 2035 (see excerpt below).⁴⁶

**Table 3.8-10
SB 375 Analysis**

	2005 (Baseline)	2020 (Plan)	2035 (Plan)
Resident population (per 1,000)	17,161	19,194	21,110
CO2 emissions (per 1,000 tons)	204.0 ^{a/}	204.5 ^{b/}	198.6 ^{b/}
Per capita emissions (pounds/day)	23.8	21.3	18.8
% difference from Plan (2020) to Baseline (2005)			-8%
% difference from Plan (2035) to Baseline (2005)			-19% ^{c/}

Note:

/a/ Based on EMFAC2007

/b/ Based on EMFAC2014 and SCAG modeling, 2019.

/c/ Includes off-model adjustments for 2035 and 2045

Source: SCAG modeling, 2019.

<http://www.scag.ca.gov/committees/CommitteeDocLibrary/jointRCPC110515fullagn.pdf>

In order to evaluate consistency with this SB 375 objective and SCAG's RTP/SCS performance-based goals, SWAPE calculated the Project's per-capita CO₂ emissions from passenger and light duty vehicles (see Attachment B). First, total annual GHG mobile emissions were multiplied by the percentage of auto and light-duty truck fleet mix, then converted into total pounds per day, then divided by the estimated service population of 216. The below table shows the per capita emissions for the Project based on SWAPE's updated modeling (see table below and Attachment B).

⁴⁵ "Connect SoCal Certified Final Program Environmental Impact Report." SCAG, May 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocial_complete.pdf?1607981618.

⁴⁶ "Connect SoCal Certified Final Program Environmental Impact Report." SCAG, May 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocial_complete.pdf?1607981618, p. 3.8-74.

CO ₂ e Per Capita Emissions from Passenger & Light-Duty Trucks,	
Exceedances under RTP/SCS Performance-Based SB 375 Goals	
Sources	Project
	SWAPE Modeling
Annual Mobile Emissions (MT CO ₂ e/year)	1,020.28
Passenger & Light-Duty Fleet Mix (%)	91.22%
Daily CO ₂ e Emissions (lbs/day)	5,621.31
Service Population	216
Per Capita Emissions (lbs/day)	26.02
21.3 lbs/day/SP (2020 Goal) Exceeded?	Yes
18.8 lbs/day/SP (2035 Goal) Exceeded?	Yes

As shown in the above table, when utilizing SWAPE's updated modeling, the Project would result in 26.02 pounds per day per service population ("lbs/day/SP"). This exceeds both SCAG's 2020 and 2035 targets of 21.3- and 18.8-lbs/day/SP, respectively, indicating that the Project is inconsistent with SCAG's RTP/SCS.

i. SB 375 RTP/SCS Daily VMT Per Capita Target

Under the SCAG's 2020 RTP/SCS, daily VMT per capita in the SCAG region should decrease from 23.2 VMT in 2016 to 20.7 VMT by 2045.⁴⁷ Daily VMT per capita in San Bernardino County should decrease from 22.2 to 19.2 VMT during that same period.⁴⁸

Here, however, the IS/MND fails to consider any of the abovementioned performance-based VMT targets. In order to evaluate consistency with the RTP/SCS's performance-based VMT reduction targets, SWAPE calculated the Project's VMT from passenger and light duty vehicles (calculations attached hereto as Attachment B). First, annual VMTs from passenger automobile and light-duty vehicle were calculated based on the CalEEMod default fleet mix, converted into daily VMT, and divided by the estimated service population of 216. The below table shows the daily VMT per capita for the Project based on SWAPE's updated modeling (see table below and Attachment B).

⁴⁷ "Connect SoCal." SCAG, September 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal-plan_0.pdf?1606001176, pp. 138.

⁴⁸ "Connect SoCal." SCAG, September 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal-plan_0.pdf?1606001176, pp. 138.

Daily VMT Per Capita from Passenger & Light-Duty Trucks, Exceedances under RTP/SCS Performance-Based SB 375 Target	
Sources	Project
	SWAPE Modeling
Annual VMT from Auto & Light-Duty Vehicles	2,360,016
Daily VMT from Auto & Light-Duty Vehicles	6,466
Service Population	216
Daily VMT Per Capita	29.93
2020 RTP/SCS Benchmarks, SCAG-Wide	
23.2 VMT (2016 Baseline) Exceed?	Yes
20.7 VMT (2045 Target) Exceed?	Yes
2020 RTP/SCS Benchmarks, Los Angeles County	
22.2 VMT (2016 Baseline) Exceed?	Yes
19.2 VMT (2045 Target) Exceed?	Yes

As shown in the above table, based on a service population of 216, the Project would result in 29.93 daily VMT per capita from passenger auto and light-duty truck vehicles. This exceeds all SCAG and Los Angeles County specific benchmarks and targets under SCAG's 2020-2045 *RTP/SCS*. Thus, based on SWAPE's updated modeling, the Project would exceed the 2016 baseline and 2045 target VMT per capita values for both Los Angeles County and the SCAG region as a whole, indicating that the Project conflicts with the SCAG's *RTP/SCS* and SB 375.

Feasible Mitigation Measures Available to Reduce Emissions

Our analysis demonstrates that the Project's health risk and GHG emissions may result in significant impacts and should be mitigated further. In an effort to reduce the Project's emissions, we identified several mitigation measures that are applicable to the proposed Project. Feasible mitigation measures can be found in CAPCOA's *Quantifying Greenhouse Gas Mitigation Measures*.⁴⁹ Therefore, to reduce the Project's emissions, consideration of the following measures should be made:

CAPCOA's <i>Quantifying Greenhouse Gas Mitigation Measures</i> ⁵⁰	
Measures – Energy	
<i>Building Energy Use</i>	
Install Programmable Thermostat Timers	
Obtain Third-party HVAC Commissioning and Verification of Energy Savings	

⁴⁹ <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>

⁵⁰ "Quantifying Greenhouse Gas Mitigation Measures." California Air Pollution Control Officers Association (CAPCOA), August 2010, available at: <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>, p.

Install Energy Efficient Appliances
Install Energy Efficient Boilers
<i>Lighting</i>
Install Higher Efficacy Public Street and Area Lighting
Limit Outdoor Lighting Requirements
Replace Traffic Lights with LED Traffic Lights
<i>Alternative Energy Generation</i>
Establish Onsite Renewable or Carbon-Neutral Energy Systems
Establish Onsite Renewable Energy System – Solar Power
Establish Onsite Renewable Energy System – Wind Power
Utilize a Combined Heat and Power System
<i>Measures – Transportation</i>
<i>Land Use/Location</i>
Increase Density
Increase Location Efficiency
Increase Diversity of Urban and Suburban Developments (Mixed Use)
Increase Destination Accessibility
Increase Transit Accessibility
Orient Project Toward Non-Auto Corridor
Locate Project near Bike Path/Bike Lane
<i>Neighborhood/Site Enhancements</i>
Provide Pedestrian Network Improvements, such as: <ul style="list-style-type: none"> • Compact, mixed-use communities • Interconnected street network • Narrower roadways and shorter block lengths • Sidewalks • Accessibility to transit and transit shelters • Traffic calming measures and street trees • Parks and public spaces • Minimize pedestrian barriers
Provide Traffic Calming Measures, such as: <ul style="list-style-type: none"> • Marked crosswalks • Count-down signal timers • Curb extensions • Speed tables • Raised crosswalks • Raised intersections • Median islands • Tight corner radii

<ul style="list-style-type: none"> • Roundabouts or mini-circles • On-street parking • Planter strips with trees • Chicanes/chokers
Implement a Neighborhood Electric Vehicle (NEV) Network.
Create Urban Non-Motorized Zones
Incorporate Bike Lane Street Design (on-site)
Provide Electric Vehicle Parking
Dedicate Land for Bike Trails
<i>Parking Policy/Pricing</i>
Unbundle Parking Costs from Property Cost
Implement Market Price Public Parking (On-Street)
Require Residential Area Parking Permits
<i>Commute Trip Reduction Programs</i>
Implement Commute Trip Reduction (CTR) Program – Voluntary <ul style="list-style-type: none"> • Carpooling encouragement • Ride-matching assistance • Preferential carpool parking • Flexible work schedules for carpools • Half time transportation coordinator • Vanpool assistance • Bicycle end-trip facilities (parking, showers and lockers) • New employee orientation of trip reduction and alternative mode options • Event promotions and publications • Flexible work schedule for employees • Transit subsidies • Parking cash-out or priced parking • Shuttles • Emergency ride home
Implement Commute Trip Reduction (CTR) Program – Required Implementation/Monitoring <ul style="list-style-type: none"> • Established performance standards (e.g. trip reduction requirements) • Required implementation • Regular monitoring and reporting
Provide Ride-Sharing Programs <ul style="list-style-type: none"> • Designate a certain percentage of parking spaces for ride sharing vehicles • Designating adequate passenger loading and unloading and waiting areas for ride-sharing vehicles • Providing a web site or messaging board for coordinating rides • Permanent transportation management association membership and funding requirement.
Provide Ent of Trip Facilities, including: <ul style="list-style-type: none"> • Showers • Secure bicycle lockers

<ul style="list-style-type: none"> • Changing spaces
<p>Encourage Telecommuting and Alternative Work Schedules, such as:</p> <ul style="list-style-type: none"> • Staggered starting times • Flexible schedules • Compressed work weeks
<p>Implement Commute Trip Reduction Marketing, such as:</p> <ul style="list-style-type: none"> • New employee orientation of trip reduction and alternative mode options • Event promotions • Publications
Implement Preferential Parking Permit Program
Implement Car-Sharing Program
Implement School Pool Program
Provide Employer-Sponsored Vanpool/Shuttle
Implement Bike-Sharing Programs
Implement School Bus Program
<p>Price Workplace Parking, such as:</p> <ul style="list-style-type: none"> • Explicitly charging for parking for its employees; • Implementing above market rate pricing; • Validating parking only for invited guests; • Not providing employee parking and transportation allowances; and • Educating employees about available alternatives.
Implement Employee Parking “Cash-Out”
<i>Transit System Improvements</i>
<p>Transit System Improvements, including:</p> <ul style="list-style-type: none"> • Grade-separated right-of-way, including bus only lanes (for buses, emergency vehicles, and sometimes taxis), and other Transit Priority measures. Some systems use guideways which automatically steer the bus on portions of the route. • Frequent, high-capacity service • High-quality vehicles that are easy to board, quiet, clean, and comfortable to ride. • Pre-paid fare collection to minimize boarding delays. • Integrated fare systems, allowing free or discounted transfers between routes and modes. • Convenient user information and marketing programs. • High quality bus stations with Transit Oriented Development in nearby areas. • Modal integration, with BRT service coordinated with walking and cycling facilities, taxi services, intercity bus, rail transit, and other transportation services.
<p>Implement Transit Access Improvements, such as:</p> <ul style="list-style-type: none"> • Sidewalk/crosswalk safety enhancements • Bus shelter improvements
Expand Transit Network
Increase Transit Service Frequency/Speed

Provide Local Shuttles
Road Pricing/Management
Implement Area or Cordon Pricing
Improve Traffic Flow, such as: <ul style="list-style-type: none"> • Signalization improvements to reduce delay; • Incident management to increase response time to breakdowns and collisions; • Intelligent Transportation Systems (ITS) to provide real-time information regarding road conditions and directions; and • Speed management to reduce high free-flow speeds.
Required Project Contributions to Transportation Infrastructure Improvement Projects
Install Park-and-Ride Lots
Vehicles
Electrify Loading Docs and/or Require Idling-Reduction Systems
Utilize Alternative Fueled Vehicles, such as: <ul style="list-style-type: none"> • Biodiesel (B20) • Liquefied Natural Gas (LNG) • Compressed Natural Gas (CNG)
Utilize Electric or Hybrid Vehicles
Measures – Water
Water Supply
Use Reclaimed Water
Use Gray Water
Use Locally Sourced Water Supply
Water Use
Install Low-Flow Water Fixtures
Adopt a Water Conservation strategy
Design Water-Efficient Landscapes (see California Department of Water Resources Model Water Efficient Landscape Ordinance), such as: <ul style="list-style-type: none"> • Reducing lawn sizes; • Planting vegetation with minimal water needs, such as native species; • Choosing vegetation appropriate for the climate of the project site; • Choosing complimentary plants with similar water needs or which can provide each other with shade and/or water.
Use Water-Efficient Landscape Irrigation Systems (“Smart” irrigation control systems)
Reduce Turf in Landscapes and Lawns
Plant Native or Drought-Resistant Trees and Vegetation
Measures – Area Landscaping
Landscaping Equipment

Prohibit Gas Powered Landscape Equipment
Implement Lawnmower Exchange Program
Electric Yard Equipment Compatibility
Measures – Solid Waste
<i>Solid Waste</i>
Institute Recycling and Composting Services
Recycle Demolished Construction Material
Measures – Vegetation
<i>Vegetation</i>
Urban Tree Planting
Create New Vegetated Open Space
Measures – Construction
<i>Construction</i>
Use Alternative Fuels for Construction Equipment
Urban Tree Planting
Use Electric and Hybrid Construction Equipment
Limit Construction Equipment Idling Beyond Regulation Requirements
<p>Institute a Heavy-Duty Off-Road Vehicle Plan, including:</p> <ul style="list-style-type: none"> • Construction vehicle inventory tracking system; • Requiring hour meters on equipment; • Document the serial number, horsepower, manufacture age, fuel, etc. of all onsite equipment; and • Daily logging of the operating hours of the equipment.
Implement a Construction Vehicle Inventory Tracking System
Measures – Miscellaneous
<i>Miscellaneous</i>
<p>Establish a Carbon Sequestration Project, such as:</p> <ul style="list-style-type: none"> • Geologic sequestration or carbon capture and storage techniques, in which CO₂ from point sources is captured and injected underground; • Terrestrial sequestration in which ecosystems are established or preserved to serve as CO₂ sinks; • Novel techniques involving advanced chemical or biological pathways; or • Technologies yet to be discovered.
Establish Off-Site Mitigation
Use Local and Sustainable Building Materials
<p>Require Environmentally Responsible Purchasing, such as:</p> <ul style="list-style-type: none"> • Purchasing products with sustainable packaging; • Purchasing post-consumer recycled copier paper, paper towels, and stationary; • Purchasing and stocking communal kitchens with reusable dishes and utensils; • Choosing sustainable cleaning supplies;

- Leasing equipment from manufacturers who will recycle the components at their end of life;
- Choosing ENERGY STAR appliances and Water Sense-certified water fixtures;
- Choosing electronic appliances with built in sleep-mode timers;
- Purchasing ‘green power’ (e.g. electricity generated from renewable or hydropower) from the utility; and
- Choosing locally-made and distributed products.

Furthermore, in an effort to reduce the Project’s emissions, we identified several mitigation measures that are applicable to the proposed Project from NEDC’s *Diesel Emission Controls in Construction Projects*.⁵¹ Therefore, to reduce the Project’s emissions, consideration of the following measures should be made:

NEDC’s Diesel Emission Controls in Construction Projects⁵²	
Measures – Diesel Emission Control Technology	
a. Diesel Onroad Vehicles	All diesel nonroad vehicles on site for more than 10 total days must have either (1) engines that meet EPA onroad emissions standards or (2) emission control technology verified by EPA or CARB to reduce PM emissions by a minimum of 85%.
b. Diesel Generators	All diesel generators on site for more than 10 total days must be equipped with emission control technology verified by EPA or CARB to reduce PM emissions by a minimum of 85%.
c. Diesel Nonroad Construction Equipment	<ul style="list-style-type: none"> i. All nonroad diesel engines on site must be Tier 2 or higher. Tier 0 and Tier 1 engines are not allowed on site ii. All diesel nonroad construction equipment on site for more than 10 total days must have either (1) engines meeting EPA Tier 4 nonroad emission standards or (2) emission control technology verified by EPA or CARB for use with nonroad engines to reduce PM emissions by a minimum of 85% for engines 50hp and greater and by a minimum of 20% for engines less than 50hp.
d. Upon confirming that the diesel vehicle, construction equipment, or generator has either an engine meeting Tier 4 non road emission standards or emission control technology, as specified above, installed and functioning, the developer will issue a compliance sticker. All diesel vehicles, construction equipment, and generators on site shall display the compliance sticker in a visible, external location as designated by the developer.	
e. Emission control technology shall be operated, maintained, and serviced as recommended by the emission control technology manufacturer.	
Measures – Additional Diesel Requirements	
a. Construction shall not proceed until the contractor submits a certified list of all diesel vehicles, construction equipment, and generators to be used on site. The list shall include the following:	

⁵¹ “Diesel Emission Controls in Construction Projects.” Northeast Diesel Collaborative (NEDC), December 2010, available at: <https://www.epa.gov/sites/production/files/2015-09/documents/nedc-model-contract-sepcification.pdf>.

⁵² “Diesel Emission Controls in Construction Projects.” Northeast Diesel Collaborative (NEDC), December 2010, available at: <https://www.epa.gov/sites/production/files/2015-09/documents/nedc-model-contract-sepcification.pdf>.

<ul style="list-style-type: none"> i. Contractor and subcontractor name and address, plus contact person responsible for the vehicles or equipment. ii. Equipment type, equipment manufacturer, equipment serial number, engine manufacturer, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. iii. For the emission control technology installed: technology type, serial number, make, model, manufacturer, EPA/CARB verification number/level, and installation date and hour-meter reading on installation date.
<p>b. If the contractor subsequently needs to bring on site equipment not on the list, the contractor shall submit written notification within 24 hours that attests the equipment complies with all contract conditions and provide information.</p>
<p>c. All diesel equipment shall comply with all pertinent local, state, and federal regulations relative to exhaust emission controls and safety.</p>
<p>d. The contractor shall establish generator sites and truck-staging zones for vehicles waiting to load or unload material on site. Such zones shall be located where diesel emissions have the least impact on abutters, the general public, and especially sensitive receptors such as hospitals, schools, daycare facilities, elderly housing, and convalescent facilities.</p>
<p>Reporting</p>
<p>a. For each onroad diesel vehicle, nonroad construction equipment, or generator, the contractor shall submit to the developer's representative a report prior to bringing said equipment on site that includes:</p> <ul style="list-style-type: none"> i. Equipment type, equipment manufacturer, equipment serial number, engine manufacturer, engine model year, engine certification (Tier rating), horsepower, and engine serial number. ii. The type of emission control technology installed, serial number, make, model, manufacturer, and EPA/CARB verification number/level. iii. The Certification Statement signed and printed on the contractor's letterhead.
<p>b. The contractor shall submit to the developer's representative a monthly report that, for each onroad diesel vehicle, nonroad construction equipment, or generator onsite, includes:</p> <ul style="list-style-type: none"> i. Hour-meter readings on arrival on-site, the first and last day of every month, and on off-site date. ii. Any problems with the equipment or emission controls. iii. Certified copies of fuel deliveries for the time period that identify: <ul style="list-style-type: none"> 1. Source of supply 2. Quantity of fuel 3. Quality of fuel, including sulfur content (percent by weight)

These measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently, reduce emissions released during Project construction and operation. An EIR should be prepared to include all feasible mitigation measures, as well as include an updated health risk and GHG analysis to ensure that the necessary mitigation measures are implemented to reduce emissions to below thresholds. The EIR should also demonstrate a commitment to the implementation of these measures prior to Project approval, to ensure that the Project's significant emissions are reduced to the maximum extent possible.

Disclaimer

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of

care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Paul E. Rosenfeld, Ph.D.

Tel: (949) 887-9013
Email: mhagemann@swape.com

Matthew F. Hagemann, P.G., C.Hg., QSD, QSP

**Geologic and Hydrogeologic Characterization
Investigation and Remediation Strategies
Litigation Support and Testifying Expert
Industrial Stormwater Compliance
CEQA Review**

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.

B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certifications:

California Professional Geologist

California Certified Hydrogeologist

Qualified SWPPP Developer and Practitioner

Professional Experience:

Matt has 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. For the past 15 years, as a founding partner with SWAPE, Matt has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality and greenhouse gas emissions.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2014, 2017;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt’s responsibilities have included:

- Lead analyst and testifying expert in the review of over 300 environmental impact reports and negative declarations since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at more than 100 industrial facilities.
- Expert witness on numerous cases including, for example, MTBE litigation, air toxins at hazards at a school, CERCLA compliance in assessment and remediation, and industrial stormwater contamination.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.

With Komex H2O Science Inc., Matt’s duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted

public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nation-wide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9.

Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, *Oxygenates in Water: Critical Information and Research Needs*.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific

principles into the policy-making process.

- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt is currently a part time geology instructor at Golden West College in Huntington Beach, California where he taught from 2010 to 2014 and in 2017.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Colorado.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and **Hagemann, M.F.** 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukunaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examinations, 2009-2011.



Paul Rosenfeld, Ph.D.

Principal Environmental Chemist

Chemical Fate and Transport & Air Dispersion Modeling

Risk Assessment & Remediation Specialist

Education

Ph.D. Soil Chemistry, University of Washington, 1999. Dissertation on VOC filtration.

M.S. Environmental Science, U.C. Berkeley, 1995. Thesis on organic waste economics.

B.A. Environmental Studies, U.C. Santa Barbara, 1991. Thesis on wastewater treatment.

Professional Experience

Dr. Rosenfeld is the Co-Founder and Principal Environmental Chemist at Soil Water Air Protection Enterprise (SWAPE). His focus is the fate and transport of environmental contaminants, risk assessment, and ecological restoration. His project experience ranges from monitoring and modeling of pollution sources as they relate to human and ecological health. Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing, petroleum, MtBE and fuel oxygenates, chlorinated solvents, pesticides, radioactive waste, PCBs, PAHs, dioxins, furans, volatile organics, semi-volatile organics, perchlorate, heavy metals, asbestos, PFOA, unusual polymers, and odor. Significant projects performed by Dr. Rosenfeld include the following:

Litigation Support

Client: Missouri Department of Natural Resources (Jefferson City, Missouri)

Serving as an expert in evaluating air pollution and odor emissions from a Republic Landfill in St. Louis, Missouri. Conducted. Project manager overseeing daily, weekly and comprehensive sampling of odor and chemicals.

Client: Louisiana Department of Transportation and Development (Baton Rouge, Louisiana)

Serving as an expert witness, conducting groundwater modeling of an ethylene dichloride DNAPL and soluble plume resulting from spill caused by Conoco Phillips.

Client: Missouri Department of Natural Resources (St. Louis, Missouri)

Serving as a consulting expert and potential testifying expert regarding a landfill fire directly adjacent to another landfill containing radioactive waste. Implemented an air monitoring program testing for over 100 different compounds using approximately 12 different analytical methods.

Client: Baron & Budd, P.C. (Dallas, Texas) and Weitz & Luxenberg (New York, New York)

Served as a consulting expert in MTBE Federal Multi District Litigation (MDL) in New York. Consolidated ground water data, created maps for test cases, constructed damage model, evaluated taste and odor threshold levels. Resulted in a settlement of over \$440 million.

Client: The Buzbee Law Firm (Houston, Texas)

Served as a as an expert in ongoing litigation involving over 50,000+ plaintiffs who are seeking compensation for chemical exposure and reduction in property value resulting from chemicals released from the BP facility.

Client: Environmental Litigation Group (Birmingham, Alabama)

Serving as an expert on property damage, medical monitoring and toxic tort claims that have been filed on behalf of over 13,000 plaintiffs who were exposed to PCBs and dioxins/furans resulting from emissions from Monsanto and Cerro Copper's operations in Sauget, Illinois. Developed AERMOD models to demonstrate plaintiff's exposure.

Client: Baron & Budd P.C. (Dallas Texas) and Korein Tillery (St. Louis, Missouri)

Served as a consulting expert for a Class Action defective product claim filed in Madison County, Illinois against Syngenta and five other manufacturers for atrazine. Evaluated health issues associated with atrazine and determined treatment cost for filtration of public drinking water supplies. Resulted in \$105 million dollar settlement.

Client: The Buzbee Law Firm (Houston, Texas)

Served as a consulting expert in catalyst release and refinery emissions cases against the BP Refinery in Texas City. A jury verdict for 10 employees exposed to catalyst via BP's irresponsible behavior.

Client: Baron & Budd, P.C. (Dallas, Texas)

Served as a consulting expert to calculate the Maximum Allowable Dose Level (MADL) and No Significant Risk Level (NSRL), based on Cal EPA and OEHHA guidelines, for Polychlorinated Biphenyls (PCBs) in fish oil dietary supplements.

Client: Girardi Keese (Los Angeles, California)

Served as an expert testifying on hydrocarbon exposure of a woman who worked on a fuel barge operated by Chevron. Demonstrated that the plaintiff was exposed to excessive amounts of benzene.

Client: Mason & Cawood (Annapolis, Maryland) and Girardi & Keese (Los Angeles, California)

Serving as an expert consultant on the Battlefield Golf Club fly ash disposal site in Chesapeake, VA, where arsenic, other metals and radionuclides are leaching into groundwater, and ash is blowing off-site onto the surrounding communities.

Client: California Earth Mineral Corporation (Culver City, California)

Evaluating the montmorillonite clay deposit located near El Centro, California. Working as a Defense Expert representing an individual who owns a 2,500 acre parcel that will potentially be seized by the United States Navy via eminent domain.

Client: Matthews & Associates (Houston, Texas)

Serving as an expert witness, preparing air model demonstrating residential exposure via emissions from fracking in natural gas wells in Duncan, Texas.

Client: Baron & Budd P.C. (Dallas, Texas) and Korein Tillery (St. Louis, Missouri)

Served as a consulting expert for analysis of private wells relating to litigation regarding compensation of private well owners for MTBE testing. Coordinated data acquisition and GIS analysis evaluating private well proximity to leaking underground storage tanks.

Client: Lurie & Park LLP (Los Angeles, California)

Served as an expert witness evaluating a vapor intrusion toxic tort case that resulted in a settlement. The Superfund site is a 4 ½ mile groundwater plume of chlorinated solvents in Whittier, California.

Client: Mason & Cawood (Annapolis, Maryland)

Evaluated data from the Hess Gasoline Station in northern Baltimore, Maryland that had a release resulting in flooding of plaintiff's homes with gasoline-contaminated water, foul odor, and biofilm growth.

Client: The Buzbee Law Firm (Houston, Texas)

Evaluated air quality resulting from grain processing emissions in Muscatine, Iowa.

Client: Anderson Kill & Olick, P.C. (Ventura, California)

Evaluated historical exposure and lateral and vertical extent of contamination resulting from a ~150 million gallon Exxon Mobil tank farm located near Watts, California.

Client: Packard Law Firm (Petaluma, California)

Served as an expert witness, evaluated lead in Proposition 65 Case where various products were found to have elevated lead levels.

Client: The Buzbee Law Firm (Houston, Texas)

Evaluated data resulting from an oil spill in Port Arthur, Texas.

Client: Nexsen Pruet, LLC (Charleston, South Carolina)

Serving as expert in chlorine exposure in a railroad tank car accident where approximately 120,000 pounds of chlorine were released.

Client: Girardi & Keese (Los Angeles, California)

Serving as an expert investigating hydrocarbon exposure and property damage for ~600 individuals and ~280 properties in Carson, California where homes were constructed above a large tank farm formerly owned by Shell.

Client: Brent Coon Law Firm (Cleveland, Ohio)

Served as an expert, calculating an environmental exposure to benzene, PAHs, and VOCs from a Chevron Refinery in Hooven, Ohio. Conducted AERMOD modeling to determine cumulative dose.

Client: Lundy Davis (Lake Charles, Louisiana)

Served as consulting expert on an oil field case representing the lease holder of a contaminated oil field. Conducted field work evaluating oil field contamination in Sulphur, Louisiana. Property is owned by Conoco Phillips, but leased by Yellow Rock, a small oil firm.

Client: Cox Cox Filo (Lake Charles, Louisiana)

Served as testifying expert on a multimillion gallon oil spill in Lake Charles which occurred on June 19, 2006, resulting in hydrocarbon vapor exposure to hundreds of workers and residents. Prepared air model and calculated exposure concentration. Demonstrated that petroleum odor alone can result in significant health harms.

Client: Cotchett Pitre & McCarthy (San Francisco, California)

Served as testifying expert representing homeowners who unknowingly purchased homes built on an old oil field in Santa Maria, California. Properties have high concentrations of petroleum hydrocarbons in subsurface soils resulting in diminished property value.

Client: Law Offices Of Anthony Liberatore P.C. (Los Angeles, California)

Served as testifying expert representing individuals who rented homes on the Inglewood Oil Field in California. Plaintiffs were exposed to hydrocarbon contaminated water and air, and experienced health harms associated with the petroleum exposure.

Client: Orange County District Attorney (Orange County, California)

Coordinated a review of 143 ARCO gas stations in Orange County to assist the District Attorney's prosecution of CCR Title 23 and California Health and Safety Code violators.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as a testifying expert in a health effects case against ABC Coke/Drummond Company for polluting a community with PAHs, benzene, particulate matter, heavy metals, and coke oven emissions. Created air dispersion models and conducted attic dust sampling, exposure modeling, and risk assessment for plaintiffs.

Client: Masry & Vitatoe (Westlake Village, California), Engstrom Lipscomb Lack (Los Angeles, California) and Baron & Budd P.C. (Dallas, Texas)

Served as a consulting expert in Proposition 65 lawsuit filed against major oil companies for benzene and toluene releases from gas stations and refineries resulting in contaminated groundwater. Settlement included over \$110 million dollars in injunctive relief.

Client: Tommy Franks Law Firm (Austin, Texas)

Served as expert evaluating groundwater contamination which resulted from the hazardous waste injection program and negligent actions of Morton Thiokol and Rohm and Haas. Evaluated drinking water contamination and community exposure.

Client: Baron & Budd P.C. (Dallas, Texas) and Sher Leff (San Francisco, California)

Served as consulting expert for several California cities that filed defective product cases against Dow Chemical and Shell for 1,2,3-trichloropropane groundwater contamination. Generated maps showing capture zones of impacted wells for various municipalities.

Client: Weitz & Luxenberg (New York, New York)

Served as expert on Property Damage and Nuisance claims resulting from emissions from the Countywide Landfill in Ohio. The landfill had an exothermic reaction or fire resulting from aluminum dross dumping, and the EPA fined the landfill \$10,000,000 dollars.

Client: Baron & Budd P.C. (Dallas, Texas)

Served as a consulting expert for a groundwater contamination case in Pensacola, Florida where fluorinated compounds contaminated wells operated by Escambia County.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as an expert on groundwater case where Exxon Mobil and Helena Chemical released ethylene dichloride into groundwater resulting in a large plume. Prepared report on the appropriate treatment technology and cost, and flaws with the proposed on-site remediation.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as an expert on air emissions released when a Bartlo Packaging Incorporated facility in West Helena, Arkansas exploded resulting in community exposure to pesticides and smoke from combustion of pesticides.

Client: Omara & Padilla (San Diego, California)

Served as a testifying expert on nuisance case against Nutro Dogfood Company that constructed a large dog food processing facility in the middle of a residential community in Victorville, California with no odor control devices. The facility has undergone significant modifications, including installation of a regenerative thermal oxidizer.

Client: Environmental Litigation Group (Birmingham, Alabama)

Serving as an expert on property damage and medical monitoring claims that have been filed against International Paper resulting from chemical emissions from facilities located in Bastrop, Louisiana; Prattville, Alabama; and Georgetown, South Carolina.

Client: Estep and Shafer L.C. (Kingwood, West Virginia)

Served as expert calculating acid emissions doses to residents resulting from coal-fired power plant emissions in West Virginia using various air models.

Client: Watts Law Firm (Austin, Texas), Woodfill & Pressler (Houston, Texas) and Woska & Associates (Oklahoma City, Oklahoma)

Served as testifying expert on community and worker exposure to CCA, creosote, PAHs, and dioxins/furans from a BNSF and Koppers Facility in Somerville, Texas. Conducted field sampling, risk assessment, dose assessment and air modeling to quantify exposure to workers and community members.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as expert regarding community exposure to CCA, creosote, PAHs, and dioxins/furans from a Louisiana Pacific wood treatment facility in Florala, Alabama. Conducted blood sampling and environmental sampling to determine environmental exposure to dioxins/furans and PAHs.

Client: Sanders Law Firm (Colorado Springs, Colorado) and Vamvoras & Schwartzberg (Lake Charles, Louisiana)

Served as an expert calculating chemical exposure to over 500 workers from large ethylene dichloride spill in Lake Charles, Louisiana at the Conoco Phillips Refinery.

Client: Baron & Budd P.C. (Dallas, Texas)

Served as consulting expert in a defective product lawsuit against Dow Agrosience focusing on Clopyralid, a recalcitrant herbicide that damaged numerous compost facilities across the United States.

Client: Sullivan Papain Block McGrath & Cannavo (New York, New York) and The Cochran Firm (Dothan, Mississippi)

Served as an expert regarding community exposure to metals, PAHs PCBs, and dioxins/furans from the burning of Ford paint sludge and municipal solid waste in Ringwood, New Jersey.

Client: Rose, Klein & Marias LLP (Los Angeles, California)

Served as an expert in 55 Proposition 65 cases against individual facilities in the Port of Los Angeles and Port of Long Beach. Prepared air dispersion and risk models to demonstrate that each facility emits diesel particulate matter that results in risks exceeding 1/100,000, hence violating the Proposition 65 Statute.

Client: Rose, Klein & Marias LLP (Los Angeles, California) and Environmental Law Foundation (San Francisco, California)

Served as an expert in a Proposition 65 case against potato chip manufacturers. Conducted an analysis of several brands of potato chips for acrylamide concentrations and found that all samples exceeded Proposition 65 No Significant Risk Levels.

Client: Gonzales & Robinson (Westlake Village, California)

Served as a testifying expert in a toxic tort case against Chevron (Ortho) for allowing a community to be contaminated with lead arsenate pesticide. Created air dispersion and soil vadose zone transport models, and evaluated bioaccumulation of lead arsenate in food.

Client: Environment Now (Santa Monica, California)

Served as expert for Environment Now to convince the State of California to file a nuisance claim against automobile manufactures to recover MediCal damages from expenditures on asthma-related health care costs.

Client: Trutanich Michell (Long Beach, California)

Served as expert representing San Pedro Boat Works in the Port of Los Angeles. Prepared air dispersion, particulate air dispersion, and storm water discharge models to demonstrate that Kaiser Bulk Loading is responsible for copper concentrate accumulating in the bay sediment.

Client: Azurix of North America (Fort Myers, Florida)

Provided expert opinions, reports and research pertaining to a proposed County Ordinance requiring biosolids applicators to measure VOC and odor concentrations at application sites' boundaries.

Client: MCP Polyurethane (Pittsburg, Kansas)

Provided expert opinions and reports regarding metal-laden landfill runoff that damaged a running track by causing the reversion of the polyurethane due to its catalytic properties.

Risk Assessment And Air Modeling

Client: Hager, Dewick & Zuengler, S.C. (Green Bay, Wisconsin)

Conducted odor audit of rendering facility in Green Bay, Wisconsin.

Client: ABT-Haskell (San Bernardino, California)

Prepared air dispersion model for a proposed state-of-the-art enclosed compost facility. Prepared a traffic analysis and developed odor detection limits to predict 1, 8, and 24-hour off-site concentrations of sulfur, ammonia, and amine.

Client: Jefferson PRP Group (Los Angeles, California)

Evaluated exposure pathways for chlorinated solvents and hexavalent chromium for human health risk assessment of Los Angeles Academy (formerly Jefferson New Middle School) operated by Los Angeles Unified School District.

Client: Covanta (Susanville, California)

Prepared human health risk assessment for Covanta Energy focusing on agricultural worker exposure to caustic fertilizer.

Client: CIWMB (Sacramento, California)

Used dispersion models to estimate traveling distance and VOC concentrations downwind from a composting facility for the California Integrated Waste Management Board.

Client: Carboquimeca (Bogotá, Columbia)

Evaluated exposure pathways for human health risk assessment for a confidential client focusing on significant concentrations of arsenic and chlorinated solvents present in groundwater used for drinking water.

Client: Navy Base Realignment and Closure Team (Treasure Island, California)

Used Johnson-Ettinger model to estimate indoor air PCB concentrations and compared estimated values with empirical data collected in homes.

Client: San Diego State University (San Diego, California)

Measured CO₂ flux from soils amended with different quantities of biosolids compost at Camp Pendleton to determine CO₂ credit values for coastal sage under fertilized and non-fertilized conditions.

Client: Navy Base Realignment and Closure Team (MCAS Tustin, California)

Evaluated cumulative risk of a multiple pathway scenario for a child resident and a construction worker. Evaluated exposure to air and soil via particulate and vapor inhalation, incidental soil ingestion, and dermal contact with soil.

Client: MCAS Miramar (San Diego, California)

Evaluated exposure pathways of metals in soil by comparing site data to background data. Risk assessment incorporated multiple pathway scenarios assuming child resident and construction worker particulate and vapor inhalation, soil ingestion, and dermal soil contact.

Client: Naval Weapons Station (Seal Beach, California)

Used a multiple pathway model to generate dust emission factors from automobiles driving on dirt roads. Calculated bioaccumulation of metals, PCBs, dioxin congeners and pesticides to estimate human and ecological risk.

Client: King County, Douglas County (Washington State)

Measured PM₁₀ and PM_{2.5} emissions from windblown soil treated with biosolids and a polyacrylamide polymer in Douglas County, Washington. Used Pilat Mark V impactor for measurement and compared data to EPA particulate regulations.

Client: King County (Seattle, Washington)

Created emission inventory for several compost and wastewater facilities comparing VOC, particulate, and fungi concentrations to NIOSH values estimating risk to workers and individuals at neighboring facilities.

Air Pollution Investigation and Remediation

Client: Republic Landfill (Santa Clarita, California)

Managed a field investigation of odor around a landfill during 30+ events. Used hedonic tone, butanol scale, dilution-to-threshold values, and odor character to evaluate odor sources and character and intensity.

Client: California Biomass (Victorville, California)

Managed a field investigation of odor around landfill during 9+ events. Used hedonic tone, butanol scale, dilution-to-threshold values, and odor character to evaluate odor sources, character and intensity.

Client: ABT-Haskell (Redlands, California)

Assisted in permitting a compost facility that will be completely enclosed with a complex scrubbing system using acid scrubbers, base scrubbers, biofilters, heat exchangers and chlorine to reduce VOC emissions by 99 percent.

Client: Synagro (Corona, California)

Designed and monitored 30-foot by 20-foot by 6-foot biofilter for VOC control at an industrial composting facility in Corona, California to reduce VOC emissions by 99 percent.

Client: Jeff Gage (Tacoma, Washington)

Conducted emission inventory at industrial compost facility using GC/MS analyses for VOCs. Evaluated effectiveness of VOC and odor control systems and estimated human health risk.

Client: Daishowa America (Port Angeles Mill, Washington)

Analyzed industrial paper sludge and ash for VOCs, heavy metals and nutrients to develop a land application program. Metals were compared to federal guidelines to determine maximum allowable land application rates.

Client: Jeff Gage (Puyallup, Washington)

Measured effectiveness of biofilters at composting facility and conducted EPA dispersion models to estimate traveling distance of odor and human health risk from exposure to volatile organics.

Surface Water, Groundwater, and Wastewater Investigation/Remediation

Client: Confidential (Downey, California)

Managed groundwater investigation to determine horizontal extent of 1,000 foot TCE plume associated with a metal finishing shop.

Client: Confidential (West Hollywood, California)

Designing soil vapor extraction system that is currently being installed for confidential client. Managing groundwater investigation to determine horizontal extent of TCE plume associated with dry cleaning.

Client: Synagro Technologies (Sacramento, California)

Managed groundwater investigation to determine if biosolids application impacted salinity and nutrient concentrations in groundwater.

Client: Navy Base Realignment and Closure Team (Treasure Island, California)

Assisted in the design and remediation of PCB, chlorinated solvent, hydrocarbon and lead contaminated groundwater and soil on Treasure Island. Negotiated screening levels with DTSC and Water Board. Assisted in the preparation of FSP/QAPP, RI/FS, and RAP documents and assisted in CEQA document preparation.

Client: Navy Base Realignment and Closure Team (MCAS Tustin, California)

Assisted in the design of groundwater monitoring systems for chlorinated solvents at Tustin MCAS. Contributed to the preparation of FS for groundwater treatment.

Client: Mission Cleaning Facility (Salinas, California)

Prepared a RAP and cost estimate for using an oxygen releasing compound (ORC) and molasses to oxidize diesel fuel in soil and groundwater at Mission Cleaning in Salinas.

Client: King County (Washington)

Established and monitored experimental plots at a US EPA Superfund Site in wetland and upland mine tailings contaminated with zinc and lead in Smelterville, Idaho. Used organic matter and pH adjustment for wetland remediation and erosion control.

Client: City of Redmond (Richmond, Washington)

Collected storm water from compost-amended and fertilized turf to measure nutrients in urban runoff. Evaluated effectiveness of organic matter-lined detention ponds on reduction of peak flow during storm events. Drafted compost amended landscape installation guidelines to promote storm water detention and nutrient runoff reduction.

Client: City of Seattle (Seattle, Washington)

Measured VOC emissions from Renton wastewater treatment plant in Washington. Ran GC/MS, dispersion models, and sensory panels to characterize, quantify, control and estimate risk from VOCs.

Client: Plumas County (Quincy, California)

Installed wetland to treat contaminated water containing 1% copper in an EPA Superfund site. Revegetated 10 acres of acidic and metal laden sand dunes resulting from hydraulic mining. Installed and monitored piezometers in wetland estimating metal loading.

Client: Adams Egg Farm (St. Kitts, West Indies)

Designed, constructed, and maintained 3 anaerobic digesters at Springfield Egg Farm, St. Kitts. Digesters treated chicken excrement before effluent discharged into sea. Chicken waste was converted into methane cooking gas.

Client: BLM (Kremmling, Colorado)

Collected water samples for monitoring program along upper stretch of the Colorado River. Rafted along river and protected water quality by digging and repairing latrines.

Soil Science and Restoration Projects

Client: Hefner, Stark & Marois, LLP (Sacramento, California)

Facilitated in assisting Hefner, Stark & Marois, LLP in working with the Regional Water Quality board to determine how to utilize Calcium Particulate as a by-product of processing sugar beets.

Client: Kinder Morgan (San Diego County, California)

Designed and monitored the restoration of a 110-acre project on Camp Pendleton along a 26-mile pipeline. Managed crew of 20, planting coastal sage, riparian, wetland, native grassland, and marsh ecosystems. Negotiated with the CDFW concerning species planting list and success standards.

Client: NAVY BRAC (Orote Landfill, Guam)

Designed and monitored pilot landfill cap mimicking limestone forest. Measured different species' root-penetration into landfill cap. Plants were used to evapotranspire water, reducing water leaching through soil profile.

Client: LA Sanitation District Puente Hills Landfill (Whittier, California)

Monitored success of upland and wetland mitigation at Puente Hills Landfill operated by Sanitation Districts of Los Angeles. Negotiated with the Army Corps of Engineers and CDFG to obtain an early sign-off.

Client: City of Escondido (Escondido, California)

Designed, managed, installed, and monitored a 20-acre coastal sage scrub restoration project at Kit Carson Park, Escondido, California.

Client: Home Depot (Encinitas, California)

Designed, managed, installed and monitored a 15-acre coastal sage scrub and wetland restoration project at Home Depot in Encinitas, California.

Client: Alvarado Water Filtration Plant (San Diego, California)

Planned, installed and monitored 2-acre riparian and coastal sage scrub mitigation in San Diego California.

Client: Monsanto and James River Corporation (Clatskanie, Oregon)

Served as a soil scientist on a 50,000-acre hybrid poplar farm. Worked on genetically engineering study of Poplar trees to see if glyphosate resistant poplar clones were economically viable.

Client: World Wildlife Fund (St. Kitts, West Indies)

Managed 2-year biodiversity study, quantifying and qualifying the various flora and fauna in St. Kitts' expanding volcanic rainforest. Collaborated with skilled botanists, ornithologists and herpetologists.

Publications

Chen, J. A., Zapata, A R., Sutherland, A. J., Molmen, D. R., Chow, B. S., Wu, L. E., **Rosenfeld, P. E.**, Hesse, R. C., (2012) Sulfur Dioxide and Volatile Organic Compound Exposure To A Community In Texas City Texas Evaluated Using Aermol and Empirical Data. American Journal of Environmental Science, 2012, 8 (6), 622-632

Rosenfeld, P.E. & Feng, L. (2011). *The Risks of Hazardous Waste*, Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2011). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Agrochemical Industry*, Amsterdam: Elsevier Publishing.

Gonzalez, J., Feng, L., Sutherland, A., Waller, C., Sok, H., Hesse, R., **Rosenfeld, P.** (2011). PCBs and Dioxins/Furans in Attic Dust Collected Near Former PCB Production and Secondary Copper Facilities in Sauget, IL. *Procedia Environmental Sciences* 4(2011):113-125.

Feng, L., Wu, C., Tam, L., Sutherland, A.J., Clark, J.J., **Rosenfeld, P.E.**, (2010). Dioxin and Furan Blood Lipid and Attic Dust Concentrations in Populations Living Near Four Wood Treatment Facilities in the United States. *Journal of Environmental Health* 73(6):34-46.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2010). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Wood and Paper Industries*, Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2009). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Petroleum Industry*, Amsterdam: Elsevier Publishing.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P.** (2009). ‘Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States’, in Brebbia, C.A. and Popov, V., eds., *Air Pollution XVII: Proceedings of the Seventeenth International Conference on Modelling, Monitoring and Management of Air Pollution*, Tallinn, Estonia. 20-22 July, 2009, Southampton, Boston. WIT Press.

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. A. Scott, J. J. J. Clark, **P. E. Rosenfeld** (2007) “Attic Dust and Human Blood Samples Collected near a Former Wood Treatment Facility” *Environmental Research*. 105, pp 194-197.

Rosenfeld, P.E., J. J. J. Clark, A. R. Hensley, M. Suffet. (2007) “The Use of an Odor Wheel Classification for Evaluation of Human Health Risk Criteria for Compost Facilities” –*Water Science & Technology* 55(5): 345-357.

Rosenfeld, P. E., M. Suffet. (2007) “The Anatomy Of Odour Wheels For Odours Of Drinking Water, Wastewater, Compost And The Urban Environment ” *Water Science & Technology* 55(5): 335-344.

Sullivan, P. J. Clark, J.J.J., Agardy, F. J., **Rosenfeld, P.E.**, (2007) “Toxic Legacy, Synthetic Toxins in the Food, Water, and Air in American Cities,” Elsevier Publishing, Boston Massachusetts.

Rosenfeld P.E., and Suffet, I.H. (Mel) (2007) “Anatomy Of An Odor Wheel” *Water Science and Technology*, In Press.

Rosenfeld, P.E., Clark, J.J.J., Hensley A.R., Suffet, I.H. (Mel) (2007) “The use of an odor wheel classification for evaluation of human health risk criteria for compost facilities.” *Water Science And Technology*, In Press.

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., and Suffet I.H. (2004) "Control of Compost Odor Using High Carbon Wood Ash", Water Science and Technology, Vol. 49, No. 9. pp. 171-178.

Rosenfeld, P.E., Clark J. J. and Suffet, I.H. (2004) "Value of and Urban Odor Wheel." (2004). WEFTEC 2004. New Orleans, October 2 - 6, 2004.

Rosenfeld, P.E., and Suffet, I.H. (2004) "Understanding Odorants Associated With Compost, Biomass Facilities, and the Land Application of Biosolids" Water Science and Technology. Vol. 49, No. 9. pp 193-199.

Rosenfeld, P.E., and Suffet I.H. (2004) "Control of Compost Odor Using High Carbon Wood Ash", Water Science and Technology, Vol. 49, No. 9. pp. 171-178.

Rosenfeld, P. E., Grey, M. A., Sellew, P. (2004) Measurement of Biosolids Odor and Odorant Emissions from Windrows, Static Pile and Biofilter. Water Environment Research. 76 (4): 310-315 JUL-AUG 2004.

Rosenfeld, P. E., Grey, M., (2003) Two stage biofilter for biosolids composting odor control. Seventh International In Situ And On Site Bioremediation Symposium. Batelle Conference Orlando Florida. June 2 and June 6, 2003.

Rosenfeld, P.E., Grey, M and Suffet, M. 2002. "Controlling Odors Using High Carbon Wood Ash." Biocycle, March 2002, Page 42.

Rosenfeld, P.E., Grey, M and Suffet, M. (2002). "Compost Demonstration Project, Sacramento, California Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility Integrated Waste Management Board Public Affairs Office, Publications Clearinghouse (MS-6), Sacramento, CA Publication #442-02-008. April 2002.

Rosenfeld, P.E., and C.L. Henry. 2001. Characterization of odor emissions from three different biosolids. Water Soil and Air pollution. Vol. 127 Nos. 1-4, pp. 173-191.

Rosenfeld, P.E., and Henry C. L., 2000. Wood ash control of odor emissions from biosolids application. Journal of Environmental Quality. 29:1662-1668.

Rosenfeld, P.E., C.L. Henry and D. Bennett. 2001. Wastewater dewatering polymer affect on biosolids odor emissions and microbial activity. Water Environment Research. 73: 363-367.

Rosenfeld, P.E., and C.L. Henry. 2001. Activated Carbon and Wood Ash Sorption of Wastewater, Compost, and Biosolids Odorants Water Environment Research, 73: 388-392.

Rosenfeld, P.E., and Henry C. L., 2001. High carbon wood ash effect on biosolids microbial activity and odor. Water Environment Research. Volume 131 No. 1-4, pp. 247-262.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings. Bellevue Washington.

Chollack, T. and **P. Rosenfeld.** 1998. Compost Amendment Handbook For Landscaping. Prepared for and distributed by the City of Redmond, Washington State.

P. Rosenfeld. 1992. The Mount Liamuiga Crater Trail. Heritage Magazine of St. Kitts, Vol. 3 No. 2.

P. Rosenfeld. 1993. High School Biogas Project to Prevent Deforestation On St. Kitts. Biomass Users Network, Vol. 7, No. 1, 1993.

P. Rosenfeld. 1992. British West Indies, St. Kitts. Surf Report, April issue.

P. Rosenfeld. 1998. Characterization, Quantification, and Control of Odor Emissions From Biosolids Application To Forest Soil. Doctoral Thesis. University of Washington College of Forest Resources.

P. Rosenfeld. 1994. Potential Utilization of Small Diameter Trees On Sierra County Public Land. Masters thesis reprinted by the Sierra County Economic Council. Sierra County, California.

P. Rosenfeld. 1991. How to Build a Small Rural Anaerobic Digester & Uses Of Biogas In The First And Third World. Bachelors Thesis. University of California.

England Environmental Agency, 2002. Landfill Gas Control Technologies. Publishing Organization Environment Agency, Rio House, Waterside Drive, Aztec West, Almondsbury BRISTOL, BS32 4UD.

Presentations

Sok, H.L.; Waller, C.C.; Feng, L.; Gonzalez, J.; Sutherland, A.J.; Wisdom-Stack, T.; Sahai, R.K.; Hesse, R.C.; **Rosenfeld, P.E.** "Atrazine: A Persistent Pesticide in Urban Drinking Water." Urban Environmental Pollution, Boston, MA, June 20-23, 2010.

Feng, L.; Gonzalez, J.; Sok, H.L.; Sutherland, A.J.; Waller, C.C.; Wisdom-Stack, T.; Sahai, R.K.; La, M.; Hesse, R.C.; **Rosenfeld, P.E.** "Bringing Environmental Justice to East St. Louis, Illinois." Urban Environmental Pollution, Boston, MA, June 20-23, 2010.

Rosenfeld, P.E. (2009) "Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States" Presentation at the 2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting, April 19-23, 2009. Tuscon, AZ.

Rosenfeld, P.E. (2009) "Cost to Filter Atrazine Contamination from Drinking Water in the United States" Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States" Presentation at the 2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting, April 19-23, 2009. Tuscon, AZ.

Rosenfeld, P. E. (2007) "Moss Point Community Exposure To Contaminants From A Releasing Facility" Platform Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (2007) "The Repeated Trespass of Tritium-Contaminated Water Into A Surrounding Community Form Repeated Waste Spills From A Nuclear Power Plant" Platform Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (2007) "Somerville Community Exposure To Contaminants From Wood Treatment Facility Emissions" Poster Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld P. E. "Production, Chemical Properties, Toxicology, & Treatment Case Studies of 1,2,3-Trichloropropane (TCP)" – Platform Presentation at the Association for Environmental Health and Sciences (AEHS) Annual Meeting, San Diego, CA, 3/2007.

Rosenfeld P. E. "Blood and Attic Sampling for Dioxin/Furan, PAH, and Metal Exposure in Florala, Alabama" – Platform Presentation at the AEHS Annual Meeting, San Diego, CA, 3/2007.

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." APHA 134 Annual Meeting & Exposition, Boston Massachusetts. November 4 to 8th, 2006.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PFOA and Related Chemicals.” Mealey’s C8/PFOA Science, Risk & Litigation Conference” October 24, 25. The Rittenhouse Hotel, Philadelphia.

Paul Rosenfeld Ph.D. “Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation PEMA Emerging Contaminant Conference. September 19. Hilton Hotel, Irvine California.

Paul Rosenfeld Ph.D. “Fate, Transport, Toxicity, And Persistence of 1,2,3-TCP.” PEMA Emerging Contaminant Conference. September 19. Hilton Hotel in Irvine, California.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PDBEs.” Mealey’s Groundwater Conference. September 26, 27. Ritz Carlton Hotel, Marina Del Ray, California.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PFOA and Related Chemicals.” International Society of Environmental Forensics: Focus On Emerging Contaminants. June 7,8. Sheraton Oceanfront Hotel, Virginia Beach, Virginia.

Paul Rosenfeld Ph.D. “Rate Transport, Persistence and Toxicology of PFOA and Related Perfluorochemicals”. 2005 National Groundwater Association Ground Water And Environmental Law Conference. July 21-22, 2005. Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld Ph.D. “Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation.” 2005 National Groundwater Association Ground Water And Environmental Law Conference. July 21-22, 2005. Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. and Rob Hesse R.G. Tert-butyl Alcohol Liability and Toxicology, A National Problem and Unquantified Liability. National Groundwater Association. Environmental Law Conference. May 5-6, 2004. Congress Plaza Hotel, Chicago Illinois.

Paul Rosenfeld, Ph.D., 2004. Perchlorate Toxicology. Presentation to a meeting of the American Groundwater Trust. March 7th, 2004. Pheonix Arizona.

Hagemann, M.F., **Paul Rosenfeld, Ph.D.** and Rob Hesse, 2004. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Paul Rosenfeld, Ph.D. A National Damage Assessment Model For PCE and Dry Cleaners. Drycleaner Symposium. California Ground Water Association. Radison Hotel, Sacramento, California. April 7, 2004.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. Understanding Historical Use, Chemical Properties, Toxicity and Regulatory Guidance of 1,4 Dioxane. National Groundwater Association. Southwest Focus Conference. Water Supply and Emerging Contaminants. February 20-21, 2003. Hyatt Regency Phoenix Arizona.

Paul Rosenfeld, Ph.D. Underground Storage Tank Litigation and Remediation. California CUPA Forum. Marriott Hotel. Anaheim California. February 6-7, 2003.

Paul Rosenfeld, Ph.D. Underground Storage Tank Litigation and Remediation. EPA Underground Storage Tank Roundtable. Sacramento California. October 23, 2002.

Rosenfeld, P.E. and Suffet, M. 2002. Understanding Odor from Compost, Wastewater and Industrial Processes. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association. Barcelona Spain. October 7- 10.

Rosenfeld, P.E. and Suffet, M. 2002. Using High Carbon Wood Ash to Control Compost Odor. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association. Barcelona Spain. October 7- 10.

Rosenfeld, P.E. and Grey, M. A. 2002. Biocycle Composting For Coastal Sage Restoration. Northwest Biosolids Management Association. Vancouver Washington. September 22-24.

Rosenfeld, P.E. and Grey, M. A. 2002. Soil Science Society Annual Conference. Indianapolis, Maryland. November 11-14.

Rosenfeld, P.E. 2000. Two stage biofilter for biosolids composting odor control. Water Environment Federation. Anaheim California. September 16, 2000.

Rosenfeld, P. E. 2000. Wood ash and biofilter control of compost odor. Biofest. October 16, 2000. Ocean Shores, California.

Rosenfeld, P. E. 2000. Bioremediation Using Organic Soil Amendments. California Resource Recovery Association. Sacramento California.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings. Bellevue Washington.

Rosenfeld, P.E., and C.L. Henry. 1999. An evaluation of ash incorporation with biosolids for odor reduction. Soil Science Society of America. Salt Lake City Utah.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Comparison of Microbial Activity and Odor Emissions from Three Different Biosolids Applied to Forest Soil. Brown and Caldwell, Seattle Washington.

Rosenfeld, P.E., C.L. Henry. 1998. Characterization, Quantification, and Control of Odor Emissions from Biosolids Application To Forest Soil. Biofest Lake Chelan, Washington.

Rosenfeld, P.E., C.L. Henry, R. B. Harrison, and R. Dills. 1997. Comparison of Odor Emissions From Three Different Biosolids Applied to Forest Soil. Soil Science Society of America, Anaheim California.

Professional History

Soil Water Air Protection Enterprise (SWAPE); 2003 to present; Founding And Managing Partner
UCLA School of Public Health; 2007 to 2010; Lecturer (Asst Res)
UCLA School of Public Health; 2003 to 2006; Adjunct Professor
UCLA Environmental Science and Engineering Program; 2002-2004; Doctoral Intern Coordinator
UCLA Institute of the Environment, 2001-2002; Research Associate
Komex H₂O Science, 2001 to 2003; Senior Remediation Scientist
National Groundwater Association, 2002-2004; Lecturer
San Diego State University, 1999-2001; Adjunct Professor
Anteon Corp., San Diego, 2000-2001; Remediation Project Manager
Ogden (now Amec), San Diego, 2000-2000; Remediation Project Manager
Bechtel, San Diego, California, 1999 – 2000; Risk Assessor
King County, Seattle, 1996 – 1999; Scientist
James River Corp., Washington, 1995-96; Scientist
Big Creek Lumber, Davenport, California, 1995; Scientist
Plumas Corp., California and USFS, Tahoe 1993-1995; Scientist
Peace Corps and World Wildlife Fund, St. Kitts, West Indies, 1991-1993; Scientist
Bureau of Land Management, Kremmling Colorado 1990; Scientist

Teaching Experience

UCLA Department of Environmental Health (Summer 2003 through 2010) Taught Environmental Health Science 100 to students, including undergrad, medical doctors, public health professionals and nurses. Course focuses on the health effects of environmental contaminants.

National Ground Water Association, Successful Remediation Technologies. Custom Course In Sante Fe, New Mexico. May 21, 2002. Focused on fate and transport of fuel contaminants associated with underground storage tanks.

National Ground Water Association; Successful Remediation Technologies Course in Chicago Illinois. April 1, 2002. Focused on fate and transport of contaminants associated with Superfund and RCRA sites.

California Integrated Waste Management Board, April and May, 2001. Alternative Landfill Caps Seminar in San Diego, Ventura, and San Francisco. Focused on both prescriptive and innovative landfill cover design.

UCLA Department of Environmental Engineering, February 5 2002 Seminar on Successful Remediation Technologies focusing on Groundwater Remediation.

University Of Washington, Soil Science Program, Teaching Assistant for several courses including: Soil Chemistry, Organic Soil Amendments, and Soil Stability.

U.C. Berkeley, Environmental Science Program Teaching Assistant for Environmental Science 10.

Academic Grants Awarded

California Integrated Waste Management Board. \$41,000 grant awarded to UCLA Institute of the Environment. Goal: To investigate effect of high carbon wood ash on volatile organic emissions from compost. 2001.

Synagro Technologies, Corona California: \$10,000 grant awarded to San Diego State University. Goal: investigate effect of biosolids for restoration and remediation of degraded coastal sage soils. 2000.

King County, Department of Research and Technology, Washington State. \$100,000 grant awarded to University of Washington: Goal: To investigate odor emissions from biosolids application and the effect of polymers and ash on VOC emissions. 1998.

Northwest Biosolids Management Association, Washington State. \$20,000 grant awarded to investigate effect of polymers and ash on VOC emissions from biosolids. 1997.

James River Corporation, Oregon: \$10,000 grant was awarded to investigate the success of genetically engineered Poplar trees with resistance to round-up. 1996.

United State Forest Service, Tahoe National Forest: \$15,000 grant was awarded to investigating fire ecology of the Tahoe National Forest. 1995.

Kellogg Foundation, Washington D.C. \$500 grant was awarded to construct a large anaerobic digester on St. Kitts in West Indies. 1993.

Cases that Dr. Rosenfeld Provided Deposition or Trial Testimony

In the Court of Common Pleas of Tuscarawas County Ohio

John Michael Abicht, et al., *Plaintiffs*, vs. Republic Services, Inc., et al., *Defendants*

Case Number: 2008 CT 10 0741 (Cons. w/ 2009 CV 10 0987)

In the Court of Common Pleas for the Second Judicial Circuit, State of South Carolina, County of Aiken

David Anderson, et al., *Plaintiffs*, vs. Norfolk Southern Corporation, et al., *Defendants*.

Case Number: 2007-CP-02-1584

In the Circuit Court of Jefferson County Alabama

Jaeanette Moss Anthony, et al., *Plaintiffs*, vs. Drummond Company Inc., et al., *Defendants*

Civil action No. CV 2008-2076

In the Ninth Judicial District Court, Parish of Rapides, State of Louisiana

Roger Price, et al., *Plaintiffs*, vs. Roy O. Martin, L.P., et al., *Defendants*.

Civil Suit Number 224,041 Division G

In the United States District Court, Western District Lafayette Division

Ackle et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.

Case Number 2:07CV1052

In the United States District Court for the Southern District of Ohio

Carolyn Baker, et al., *Plaintiffs*, vs. Chevron Oil Company, et al., *Defendants*.

Case Number 1:05 CV 227

In the Fourth Judicial District Court, Parish of Calcasieu, State of Louisiana

Craig Steven Arabie, et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.

Case Number 07-2738 G

In the Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana

Leon B. Brydels, *Plaintiffs*, vs. Conoco, Inc., et al., *Defendants*.

Case Number 2004-6941 Division A

In the District Court of Tarrant County, Texas, 153rd Judicial District

Linda Faust, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, Witco Chemical Corporation A/K/A Witco Corporation, Solvents and Chemicals, Inc. and Koppers Industries, Inc., *Defendants*.

Case Number 153-212928-05

In the Superior Court of the State of California in and for the County of San Bernardino

Leroy Allen, et al., *Plaintiffs*, vs. Nutro Products, Inc., a California Corporation and DOES 1 to 100, inclusive, *Defendants*.

John Loney, Plaintiff, vs. James H. Didion, Sr.; Nutro Products, Inc.; DOES 1 through 20, inclusive, *Defendants*.

Case Number VCVVS044671

In the United States District Court for the Middle District of Alabama, Northern Division

James K. Benefield, et al., *Plaintiffs*, vs. International Paper Company, *Defendant*.

Civil Action Number 2:09-cv-232-WHA-TFM

In the Superior Court of the State of California in and for the County of Los Angeles

Leslie Hensley and Rick Hensley, *Plaintiffs*, vs. Peter T. Hoss, as trustee on behalf of the Cone Fee Trust; Plains Exploration & Production Company, a Delaware corporation; Rayne Water Conditioning, Inc., a California corporation; and DOES 1 through 100, *Defendants*.

Case Number SC094173

In the Superior Court of the State of California in and for the County of Santa Barbara, Santa Maria Branch
Clifford and Shirley Adelhelm, et al., all individually, *Plaintiffs*, vs. Unocal Corporation, a Delaware
Corporation; Union Oil Company of California, a California corporation; Chevron Corporation, a
California corporation; ConocoPhillips, a Texas corporation; Kerr-McGee Corporation, an Oklahoma
corporation; and DOES 1 through 100, *Defendants*.
Case Number 1229251 (Consolidated with case number 1231299)

In the United States District Court for Eastern District of Arkansas, Eastern District of Arkansas
Harry Stephens Farms, Inc. and Harry Stephens, individual and as managing partner of Stephens
Partnership, *Plaintiffs*, vs. Helena Chemical Company, and Exxon Mobil Corp., successor to Mobil
Chemical Co., *Defendants*.
Case Number 2:06-CV-00166 JMM (Consolidated with case number 4:07CV00278 JMM)

In the United States District Court for the Western District of Arkansas, Texarkana Division
Rhonda Brasel, et al., *Plaintiffs*, vs. Weyerhaeuser Company and DOES 1 through 100, *Defendants*.
Civil Action Number 07-4037

In The Superior Court of the State of California County of Santa Cruz
Constance Acevedo, et al. *Plaintiffs* Vs. California Spray Company, et al. *Defendants*
Case No CV 146344

In the District Court of Texas 21st Judicial District of Burleson County
Dennis Davis, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, *Defendant*.
Case Number 25,151

In the United States District Court of Southern District of Texas Galveston Division
Kyle Cannon, Eugene Donovan, Genaro Ramirez, Carol Sassler, and Harvey Walton, each Individually and
on behalf of those similarly situated, *Plaintiffs*, vs. BP Products North America, Inc., *Defendant*.
Case 3:10-cv-00622

ATTACHMENT B

MENLO SCIENTIFIC ACOUSTICS, INC.

Consultants in Acoustics and Communication Technologies

3 March 2021

Ms. Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, California 94080

Subject: **2053 – 2058 East 7th Street, Los Angeles Project**
 ENV-2017-4735-MND and Appendix F - Noise Impact Review

Per Mr. Darien K. Key's request, Menlo Scientific Acoustics, Inc. (MSAI), reviewed the Mitigated Negative Declaration ENV-2017-4735-MND as well as Appendix F Noise Monitoring Data and Calculation Worksheets for the subject project. The discussion below provides a summary of our review. The items discussed below indicate some of the ways in which the MND and Appendix F does not adequately describe the project noise impacts, presents the impression the impacts are not significant, and omits potential noise sources and discussion of their impacts.

I. The Mitigated Negative Declaration Fails to Provide an Adequate Project Definition

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

- a. MND Part 4 Environmental Checklist Section XIII, page 136, asserts, that the project will have less than significant impact with mitigation incorporated for the "generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies." This is not supported by the incomplete analysis in the MND nor by the brief noise data presented in Appendix F.
- b. MND Fundamentals of Noise discussion, page 136, mentions noise disturbance levels that can disrupt sleep but does not address the operational impacts of the 4th level Hotel Roof Terrace Lounge, Hotel Green Roof Outdoor Eating, Hotel Café/Bar Garden Seating, Hotel Outdoor Gallery, or the Hotel Coffee/Bar. The MND also does not address the operational impacts of the bars on the 13th and 14th floors. There is no mention of what these activities may include, such as, but not limited to, live music, DJ's, foreground/background music, and patron noise for parties, nor does the MND attempt to quantify the increase in ambient noise levels that these activities will produce. These activities are likely to generate substantial increases in operational noise levels, and may generate even more substantial noise from boisterous patrons to these events since alcohol will be served.

MENLO SCIENTIFIC ACOUSTICS, INC.

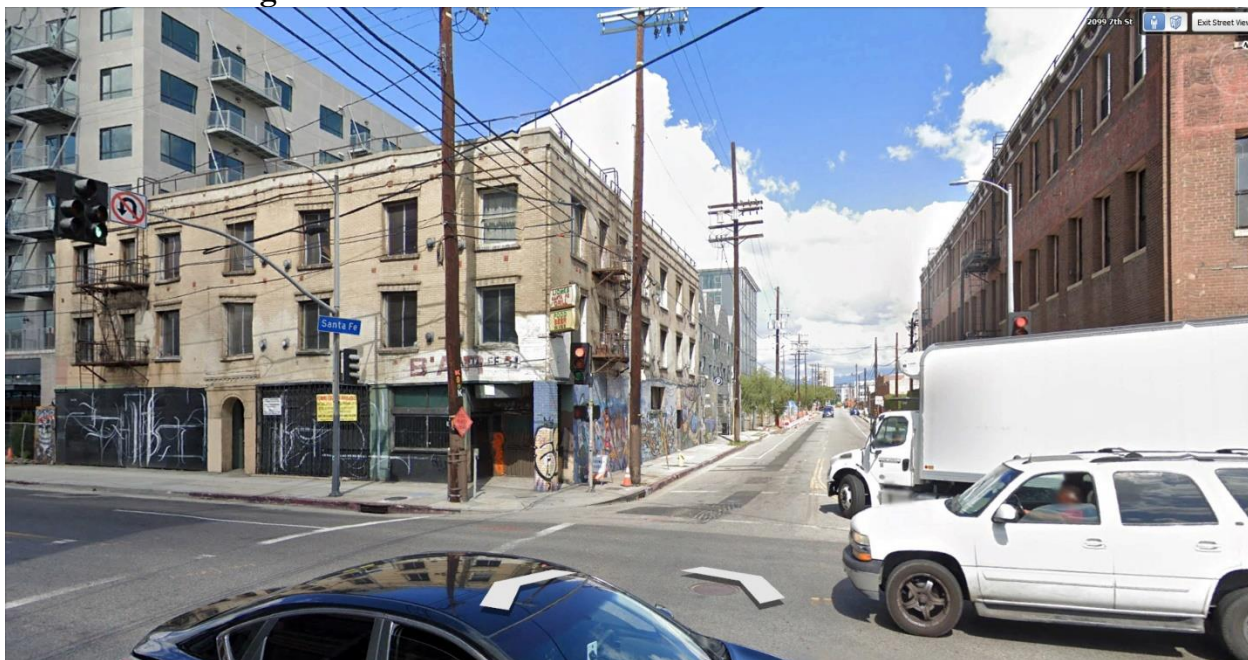
Live music levels can exceed 85 dBA for lounge type acts. For DJ's, pop bands, and cover bands the level can easily exceed 100 dBA. DJ and foreground music levels can also impact adjacent residential units.

The 4th level roof spaces are directly adjacent to the mid- to upper-levels of the Amp Lofts Building (1 - <10 feet) and directly across the street from both the Artis-in Residence Building 2101 E 7th Street (2 - ~50 feet), and the Ford Factory Building (3 - ~75 feet), as shown on MND Figure 3.3). The proximity of the proposed project 4th roof is shown in Figure 1, View to the NW Santa Fe and 7th Street. Based on the proximity of the 4th roof to the Project' outdoor dining and entertainment activities, and the increase in noise levels that Project activities are likely to produce, Project activities are likely to result in significant increases in ambient noise levels. No mitigation is proposed for these spaces or the operational impact from them.

As the MND notes, buildings can provide attenuation of noise from traffic. For the 4th, 13th, 14th, and tower roof, the ambient noise levels at the west side of the Project will be much lower during the evening and nighttime, and so activities at the Project outdoor areas can have significant impact.

Therefore, the MND's declaration of "no impact" is not supported. It is likely that the Project will result in significant, unmitigated operational noise impacts.

Figure 1 - View to the NW Santa Fe and 7th Street



Source: Google Maps

- c. The MND contains inadequate baseline data to establish existing ambient noise levels. The MND Ambient Noise Levels discussion, page 139, presents noise data from three locations, where the data was collected for just for 15 minutes at each location, on Thursday, April 4, 2019. The MND then proceeds to use this extremely limited data for

MENLO SCIENTIFIC ACOUSTICS, INC.

the determination that the construction activities at, on, and around the project site will have “Less Than Significant Impact With Mitigation Incorporated.”

The analysis and findings are not supported by the data:

- One 15-minute time period cannot accurately determine the ambient noise from 7 AM to 6 PM, which are the hours of construction per proposed Mitigation Measure MM-N-1 for this project. Ambient noise varies and is due to the traffic flow and construction activities at the time of the measurement, and therefore may not be “comparable to that during which the measurement is taken of the particular noise source being measured.” – City of Los Angeles Municipal Code Chapter XI Noise Regulation 111.01 (a)
- The temporary noise-attenuation sound barrier per Mitigation Measure MM-N-4 is not effective for sensitive receptors that are higher than 8’ above the ground or for sensitive receptors that have a direct view of the project site. The impacts on residential units above ground level in the neighboring buildings during the demolition and excavation/grading phases of the construction, despite a mitigation offered by an eight-foot-high barrier, is neither disclosed nor discussed. This impact is substantial, and requires additional mitigation.
- There was no discussion of whether haul trucks from construction projects in the vicinity were present which could increase the measured noise levels during the limited measurement periods.
- There was no discussion of the effect of the 6th Street Bridge closure on the general traffic counts during the limited measurement periods nor was there a discussion of the expected traffic counts once the bridge is again open and the lower noise due to these lower traffic counts.

- d. MND Haul Truck Noise discussion, page 147, incorrectly states the number of inbound and outbound trips per day – “approximately eight round trips per day (including four inbound and four outbound trips)”. A round trip includes one inbound trip and one outbound trip so the number of truck impacts is two per round trip - one incoming and one outgoing. As such, the number of trips per day for just the 2,500 cy of soil is ~358. Since there is one inbound and one outbound trip for each 14-cy capacity haul, there are 716 truck trips for the soil only or 16 haul truck in/out trips per day. There is no discussion or analysis for the 716 soil removal truck arrival/departure impacts. Now, assuming this debris will be hauled using roll-off containers and the ratio of heavy (concrete, etc.) using 10 cy containers to light-weight debris using 40 cy containers is 1:2 there will be an additional 88 round trips (176 in/out trips) for the 10-cy debris and an additional 176 round trips (352 in/out trips) for the 40 cy containers. There is no discussion or analysis for these 352 debris removal debris removal truck arrival/departure impacts.
- e. MND Haul Truck Noise discussion, page 147, says “It is assumed that haul truck trips would occur uniformly predominately outside peak hours.” There is no discussion of what are peak hours and how this would work in practice as it requires 1) the demolition/site clearing and grading be choreographed so that trucks will arrive during these phases when needed so that construction activities are not suspended to wait for a truck, and 2) construction activities for these phases are within the peak hours’ time frame. If it is possible for the haul truck timing to be scheduled to fall within the

MENLO SCIENTIFIC ACOUSTICS, INC.

(undefined) peak hours, the impact will be increased since the time between truck arrivals and departures will be reduced, and the arrival of one truck and the departure of another truck will overlap so the noise level will be higher, and the impact will increase.

- f. MND Haul Temporary Right-of Way Encroachment, page 44, says “Mitigation Measure MM-TR-1 requires preparation of a Construction Management Plan that shall be submitted to LADOT review and approval in accordance with the LAMC prior to the start of any construction work,” while the Haul Truck Noise discussion, page 147, says “A Haul Truck Route program would be described for the Proposed Project and approved by LADOT as part of the Construction Management Plan (refer to Mitigation Measure MM-TR-1). Since haul truck loading and unloading activities would occur on-site and/or within the boundaries of an approved traffic control plan and during the hours as required by the Noise Ordinance, the haul truck noise would be considered less than significant.” The determination that the impact “would be considered less than significant” is speculation and not supported by any quantitative analysis in the MND or any description of the haul plan. Nor is any mitigation in the plan presented for review since no plan has been developed, submitted, reviewed, or approved by the City or LDOT.

The MND does not disclose the type of equipment used for the construction of the building, although Appendix F lists some, but not all, equipment. Nor is there any analysis of the impact of same on the noise sensitive receivers in the Amp Lofts immediately adjacent to the project and less than the 50-foot reference for equipment noise. There is no discussion of possible mitigation needed for construction activities that will be in close proximity to the lower-, mid-, and upper levels of the Amp Lofts during the construction of the project tower or the construction of the additional floor and roof amenities of the existing three-story 14,910 square foot building on the project site. The MND notes that noise levels will increase as the distance between noise source and a receptor decreases. Most of the Project site is within 50 feet of the Amp Loft residence units. The MND analysis using a 50-foot reference for the noise level of construction equipment underestimates the impact from the construction equipment and so does not support the finding of Less Than Significant Impact. In fact, the impact from construction equipment will be significant even with mitigation (see Figure 2 and Table 1, below).

- g. The MND does not disclose any operational noise impacts from activities on the 4th floor roof, 13th floor outside space, or the Tower 15th floor roof. As discussed above, these impacts are likely to be significant, requiring mitigation.

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

Due to the deficiencies discussed in item I.c, above, it is necessary to establish an accurate existing baseline to estimate noise impacts as accurately as possible. The MND fails to provide an accurate description of existing noise conditions because it uses imprecise and inadequate methods to establish a baseline. Any analysis that follows is therefore flawed.

For example, MND Table 4.13, Estimated Exterior Construction Noise at Nearest Sensitive Receptors Without Mitigation, presents data from 15-minute mid-day noise measurements taken

MENLO SCIENTIFIC ACOUSTICS, INC.

at the Project site on one day. Absent from the MND or its analyses are details critical to support its conclusions regarding the existing baseline at the Project site. No description of the environmental conditions in the vicinity, such as the current or former presence of construction and other activities near the measurement locations or other environmental conditions such as wind that could affect the noise baseline measurements are disclosed. There is no statement to the effect “All equipment is under current calibration, copies of which are available on request” and so the accuracy of the measurements is open to question. Nor is the software used to process, analyze, and present the data disclosed.

Without this information, the City is unable to determine whether the increase in ambient noise levels caused by Project construction and operation would be significant, as called for by CEQA.

III. The MND’s Conclusions Regarding Construction Noise Impacts Are Inaccurate and Underestimated

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

Appendix F presents estimated construction noise levels at the adjacent and nearest sensitive receptor, the Amp Lofts (circle 1), shown in page 3 of 22 of Appendix F, is not accurate, for the Building and Architectural Coating phases since the distance from the project tower to the Amp Lofts building (receptor #1) is typically less than 50 feet. Based on MND Figure 3.6, it appears that over 75% of the project site area is 50 feet or less from the Amp Lofts as shown in the markup of MND Figure 3.6, shown in Figure 2, Project Distance to Amp Lofts – 50 Foot, below, which shows in red the only portions of the project that are 50 feet or more from the project property line and the Amp Lofts.

For distances less than 50 feet, the impact increases 6 dB for every halving of the distance, so for some distances less than 50 feet, the projected levels using the assumed construction noise levels presented in Appendix F are significant, especially as there is no mitigation above that provided by the proposed 8-foot-high barrier in mitigation measure MM-N-4. The projected levels at distances less than 50 feet are presented in Table 1 – Noise Levels at Amp Lofts for Activities Less Than 50 Feet, below, using the analysis for attenuation for distance presented in MND Section XIII Noise, Fundamentals of Noise, page 138.

MENLO SCIENTIFIC ACOUSTICS, INC.

Figure 2- Project Distance to Amp Lofts – 50 Foot

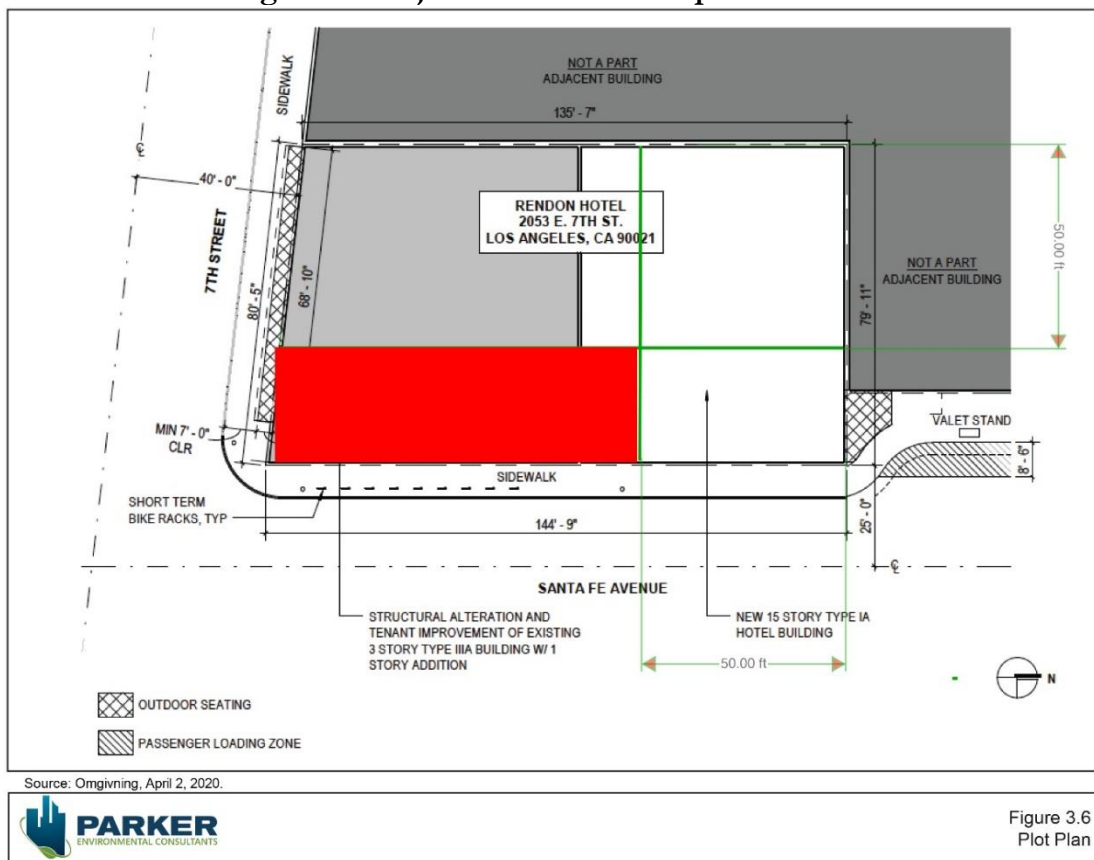


Table 1 – Noise Levels at Amp Lofts for Activities Less than 50 Feet

Phase	Construction Noise Level (dBA Leq) at 50' *	Construction Noise Level (dBA Leq) at 25'	Construction Noise Level (dBA Leq) at 12.5'	Construction Noise Level (dBA Leq) at 6.25'
Demolition/Site Clearing	85.9	91.9	97.9	106.9
Grading	86.4	92.4	98.4	104.4
Building	82.3	88.3	94.3	100.3
Architectural Coating	81.4	87.4	93.4	99.4

* per Appendix F

If one assumes the construction noise significance criteria in MND Table 4.13 and Table 4.14 are correct (they can in fact be lower than stated in these Tables, as noted in section I.c, above), the levels in Table 1, above, in RED exceed the “Noise Impact Above 5-dBA Thresholds” noted in Table 4.13 and Table 4.14, and so these impacts are significant.

In addition, one notes that the MND presents projected noise levels only for the demolition and excavation/grading construction phases of the project, the deficiencies and defects of which are discussed in section I, above.

MENLO SCIENTIFIC ACOUSTICS, INC.

IV. Mitigation of Construction Noise is Inadequate and Operational Noise is Not Discussed nor Disclosed

The measures proposed by the MND to mitigate noise impacts are woefully inadequate and are ineffective. The MND notes that to mitigate adverse construction noise impacts at the Amp Lofts and other nearby residential properties, an eight-foot-high barrier will be installed along the western boundary of the Project site during demolition and excavation/grading. This barrier, which will be on grade, stands at a much lower height than any residential units in both buildings, will provide no mitigation to units 8 feet or more above grade. As such the impact of construction activities can be considered significant. A potential mitigation measure for reducing construction noise impacts is retrofitting windows at impacted existing residential properties, similar to that implemented at LAX.

Furthermore, and of more lasting impact, nowhere in the MND are impacts from operational aspects of the project, such as from music or loud (and potentially inebriated) patrons on the Hotel Roof Terrace Lounge, Hotel Green Roof Outdoor Eating, Hotel Café/Bar Garden Seating, Hotel Outdoor Gallery, or the Hotel Coffee/Bar on Amp Lofts units, discussed or disclosed. Music on the 4th Floor Roof spaces will cause significant impact on the Amp Loft units to the immediate west of these project spaces. e project 4th floor roof. There is no discussion of the events and activities that will occur on the 13th floor, or the Tower 15th floor Spa (pool), Spa Deck, Roof Garden, Roof Lounge, and Roof Viewing Terrace. As such the impact of these undisclosed activities can be considered significant.

Music, especially the low frequency sounds present in many music genres, can be a nuisance and impact residential units in close proximity. Music can impact the interior of the residences since windows do not have good low-frequency attenuation. Potential mitigation measures for reducing these impacts can include limiting music or sound levels, including not allowing music at the 4th floor roof and 15th floor spaces, as well as retrofitting windows at impacted existing residential properties, similar to that implemented at LAX. The City should prepare an EIR which discloses these impacts and consider adopting these mitigation measures to reduce potentially significant noise operational noise impacts.

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

Sincerely,
MENLO SCIENTIFIC ACOUSTICS, INC.



Neil A. Shaw, FASA, FAES

NAS:sk

RESUME - NEIL A. SHAW

Education: University of California, Los Angeles
B. S. Engineering, 1977, cum laude
M. S. Engineering, 1977

Cooper Union, New York, 1968 - 1970

Honors: Kenward S. Oliphant Memorial Fellowship in Acoustical Engineering (awarded by Consulting Engineers Association of California)
Tau Beta Pi

Experience: Menlo Scientific Acoustics, Inc., Topanga

Designer and manager for acoustic design projects including audio-visual systems, sound reinforcement systems, television and radio production systems, architectural room acoustics, electromagnetic compatibility system design and criteria development, electroacoustic and electronic signal processing equipment product performance criteria development, product design and development, environmental noise surveys and analysis, noise and vibrations control, sound isolation, and machine noise control.
1992 to present.
Principal.

University of Southern California, Thornton School of Music
2008 - 2010.

Southern California Institute of Architecture, Los Angeles
2003.

WEAL, Santa Monica

Design and construction services for sound reinforcement systems, television systems, A/V systems, paging systems, and masking noise systems for various production facilities, convention centers, airport terminals, auditoriums, places of worship, concert halls, athletic facilities, courtrooms, multipurpose rooms, gymnasiums, museums, banquet halls, lecture rooms and other facilities. Transportation ambient noise surveys and analysis, construction site noise measurements, and field STC and NIC measurements per ASTM E 336-84. Lead member of team to install, run and maintain database manager computer software for company projects and clients. Part of design, implementation and enhancement team for computer controlled laboratory data acquisition and processing for laboratory tests performed per ASTM E 90-85 and ASTM C 423-84a.
1975 to 1992.

Aero-acoustics Laboratory, UCLA

Responsibilities include computer programming, aero-acoustic measurements, acoustic measurements, database search and statistical processing, A/D anti-aliasing filter design and prototyping, multi-channel data acquisition and processing, post processing and display.
1978 to 1984.

Affiliations:

Fellow, Acoustical Society of America
Chairman, Los Angeles Chapter, 1991 to 2001.
Organizer and Co-Chair, Joint ASA/ASJ meeting 1996, Auralization Special Session.
Organizer and Chair, ASA meeting, 1997, Engineering Acoustics Special Session.
Organizer and Co-Chair, ASA meeting, 1999, Engineering Acoustics Special Session.
Organizer and Co-Chair, ASA meeting, 2000, Student Loudspeaker Design Competition.
Chairman, ASA meeting, 2001, Architectural Acoustics Modeling and Imaging Special Session.
Organizer and Chair, ASA meeting, 2001, Architectural Acoustics Cruise Ship Acoustics Special Session.
Tutorial on Architectural Acoustics, Joint ASA/ICA/MCA Cancun meeting, December 2002.
Invited Paper, November 2003 ASA meeting, "Sound Quality and Loudspeakers," Special Session on Sound Quality - When Sound is the Essential Quality.
Organizer and Co-Chair, ASA meeting, 2004, Special Session on the Bell Laboratories and Acoustics.
Invited Paper, June 2004 ASA meeting, "Textbooks on Acoustics," On the Occasion of His 90th Birthday, To Honor the Contributions of Leo L. Beranek to Acoustics and Teaching Special Session sponsored by all the Technical Committees and ASA Committees.
Chairman, June 2004 ASA meeting, General Topics in Architectural Acoustics
Invited Paper, June 2005 ASA meeting, "Barnum Hall - The Continuing Renovation of a Streamline Moderne Theater," Special Session on Preserving Acoustical Integrity in the Course of Renovation.
Invited Paper, Winter 2007 ASA meeting, "Sound Systems for Large Scale Venues," with John Monitto, Special session on Sound Systems in Large Rooms and Stadia
Member, Technical Committee on Architectural Acoustics, 1996 - 2010
Member, Technical Committee on Engineering Acoustics, 1998 - 2010
Member, Technical Committee on Physical Acoustics, 2000 - 2010
Member, Books+ Committee, 1996 - present

Fellow, Audio Engineering Society
Member, Technical Committee on Acoustics and Sound Reinforcement, 1988 to 2005.
Chairman, Large Array Systems Session and Special JAES issue, 1987
Chairman, Workshop on Auralization, 1993
Co-Chairman, Workshop on Weather-Related Issues in Outdoor Sound Reinforcement, 1998
Tutorial on Loudness, Los Angeles Chapter, March 2003

Senior Member, Institute of Electrical and Electronic Engineers

Member, Society of Motion Picture and Television Engineers
Member, Standards Community TC-20F Film, TC-20F-30 WG Film Audio, TC-20F-40 Theatrical Projection, ST-SG Theater B-chain
1990 to present.

Member, Institute of Noise Control Engineering

Licenses: Electrical Contractor's License, CA #342710
EIT, CA #37673

Publications: Preface to the Reprint Edition, "Principles and Applications of Room Acoustics", Lothar Cremer and Helmut A. Muller (translated by Theodore J. Shultz), Peninsula Publishers, Los Altos Hills, CA, reprint edition, to be re-published.

Patent reviews, Journal of the Acoustical Society of America, 2004 -present.

Shaw, Neil A, "Up in Knudsen's Attic: Some Private papers of Vern O. Knudsen," Acoustics Today, 7(1), 29ff, January 2011

Shaw, Neil A., "Seeing, Hearing & Listening - Part II", Live Sound International, 17(4), 58ff, April 2008

Shaw, Neil A., "Seeing, Hearing & Listening - Part I", Live Sound International, 17(3), 12ff, March 2008

Shaw, Neil A., "The Pre-history and Early History of Loudspeakers", part 4 of 4, Live Sound International, 16(8), 66ff, August 2007

Shaw, Neil A., "The Pre-history and Early History of Loudspeakers", part 3 of 4, Live Sound International, 16(7), 54ff, July 2007

Shaw, Neil A., "The Pre-history and Early History of Loudspeakers", part 2 of 4, Live Sound International, 15(12), 12ff, December 2006

Shaw, Neil A., "An Early History of Modern Power Amplifiers," Live Sound International, 15(2), 10ff, February 2006

Shaw, Neil A., "The Pre-history and Early History of Loudspeakers", part 1 of 4, Live Sound International, 14(4), 38ff, November 2005

"Audio" monthly column, Club System International magazine, 2000 - 2003.

Shaw, Neil A., "The Pre-History and Early History of Loudspeakers", Sound and Communications, 41(4), 118ff, April 1995.

Shaw, Neil A., "Acoustical Design and Auralization", Sound and Communications, 40(8), 44ff, August 1994.

Shaw, Neil A., Klapholz, Jesse and Gander, Mark R., "Books and Acoustics, Especially Wallace Clement Sabine's Collected Papers on Acoustics," Proceedings of the Sabine Centennial Symposium, Acoustical Society of America, Cambridge, MA, June 1994.

Shaw, Neil A., "Digital Delays, Part Three - Real World Applications for Real World Delay Units," Sound and Communications, 39(10), 16ff, October 1993.

Shaw, Neil A., "Digital Delays, Part Two - Testing Specific Products for Specific Uses," Sound and Communications, 39(5), 62ff, May 1993.

Shaw, Neil A., "Digital Delays, Part One - Reviewing the Basics," Sound and Communications, 393(4), 96ff, March 1993.

Meecham, W. C. and Shaw, Neil, "Increase in Disease Mortality Rates Due to Aircraft Noise", Proceedings of the International Symposium on Noise and Disease, Berlin, 1991

Meecham, W. C. and Shaw, Neil, "Increase in Disease Mortality Rates Due to Aircraft Noise," Proceedings of the 5th International Congress on Noise as a Public Health Problem, Stockholm, 351-356, 1988

Shaw, Neil A., "A Historical Profile: Stereophonic Sound Systems, Part Two," Sound and Communications, 33(7), 24ff, July 1987.

Shaw, Neil A., "A Historical Profile: Stereophonic Sound Systems, P a r t One," Sound and Communications, 33(6), 22ff, June 1987.

Shaw, Neil A., "Exhibit Hall and Theater Sound Reinforcement Systems at the Metro Toronto Convention Center," Proceedings 12th International Congress of Acoustics, E9-5.1 - E9-5.2, 1986.

Meecham, W. C. and N. A. Shaw, "Jet Plane Noise Effects on Mortality Rates," Proceedings Internoise 86 Progress in Noise Control, Volume II, 1451-1455, 1986.

Shaw, N. A., "Effects of Jet Noise on Mortality Rates," Los Angeles County Department of Health, The Effects of Aircraft Noise on Health, June, 1981

Meecham, W. C. and N. A. Shaw, "Effects of Jet Noise On Mortality Rates," British Journal of Audiology, 13, 77-80, 1979.

Book Reviews:

"Acoustical Engineering," Harry F. Olson - Journal of the Audio Engineering Society, Vol. 40, No. 5, May 1992, Sound and Communications, Vol. 38, No. 4, April 27, 1992.

"Concert Sound - Tours, Technologies and Techniques," David Trubitt - Journal of the Audio Engineering Society.

"Hearing - An Introduction to Psychological and Physiological Acoustics," Stanley A. Gelfand - Sound and Communications, Vol. 37, No. 3, March 22, 1991.

"Room Acoustics," Henrich Kuttruff - Sound and Communications, Vol. 38, No. 2, February 28, 1992.

"The Science of Sound," Thomas D. Rossing - Sound and Communications, Vol. 37, No. 10, October 22, 1991.

"AIP Handbook of Condenser Microphones," George S. K. Wong and Tony F. W. Embleton, Editors - Journal of the Audio Engineering Society, Vol. 43, No. 6, June 1995.

"The ASA Edition of Speech and Hearing in Communication", Harvey Fletcher - Sound and Communication, Vol. 41, No. 9, September 25, 1995.

"The Nature and Technology of Acoustic Space", Mikio Tohyama, Hideo Suzuki and Yoichi Ando - Journal of the Audio Engineering Society, Vol. 44, No. 3, March 1996.

"Concert and Opera Halls - How They Sound", Leo Beranek - Journal of the Audio Engineering Society, Vol. 44, No. 9, September 1996.

"Acoustics and Noise Control Handbook for Architects and Builders", Leland K. Irvine and Roy L. Richards - Journal of the Audio Engineering Society, Vol. 46, No. 5, May 1998.

"Encyclopedia of Acoustics", Edited by Malcolm J. Crocker - Journal of the Audio Engineering Society, Vol. 46, No. 9, September 1998.

"The New Stereo Soundbook, Ron Streicher and Alton Everest - Journal of the Acoustical Society of America, Vol. 105, No. 6, June 1999.

"Introduction to Electroacoustics and Audio Amplifier Design," W. Marshall Leach, Jr. - Journal of the Audio Engineering Society, Vol. 47, No. 7/8, July/August 1999, Sound and Communications, Vol. 45, No. 9, September 20, 1999.

"Architectural Acoustics - Principles and Design," Madan Mehta, Jim Johnson, and Jorge Rocafort - Journal of the Audio Engineering Society, Vol. 47, No. 10, October 1999.

"Architectural Acoustics: Blending Sound Sources, Sound Fields, and Listening," Yoichi Ando - Journal of the Audio Engineering Society, Vol. 48, No. 1/2, January/February 2000.

"Fundamental of Physical Acoustics," David T. Blackstock - Journal of the Audio Engineering Society, Vol. 48, No. 9, September 2000.

"The Science and Applications of Acoustics," Daniel R. Raichel - Journal of the Audio Engineering Society, Vol. 48, No. 10, October 2000.

"Sounds of Our Times," Robert T. Beyer - Journal of the Audio Engineering Society, Vol. 48, No. 11, November 2000.

"Acoustics: Basic Physics, Theory and Methods," Paul Filippi, Dominique Habalt, Jean-Pierre Lefebvre and Aime Bergassoli - Journal of the Audio Engineering Society, Vol. 49, No. 1+2, January/February 2001.

"Active Noise Control Primer," Scott D. Snyder - Journal of the Audio Engineering Society, Vol. 49, No. 5, May 2001.

"The Microphone Book," John Eargle - Sound & Communications, November 2001.

"Computer Speech Recognition, Compression, Synthesis," Manfred R. Schroeder - Journal of the Audio Engineering Society, Vol. 49, No. 12, December 2001.

"Audio Engineering For Sound Reinforcement," John Eargle and Chris Foreman - Journal of the Audio Engineering Society. Vol. 50, No. 12,

December 2002.

“Pro Audio Reference,” Dennis Bohn - Journal of the Audio Engineering Society, Vol. 51, No. 7/8, July/August 2003.

“Concert Halls and Opera Houses - Music, Acoustics, and Architecture,” Leo L. Beranek - Journal of the Audio Engineering Society, Vol. 52, No. 5, May 2004

“Acoustic Absorbers and Diffusers - Theory, Design and Application,” Trevor J. Cox and Peter D’Antonio - Journal of the Audio Engineering Society, Volume 53, No. 10, October 2005

“Formulas of Acoustics,” F. P. Mechel - Journal of the Audio Engineering Society, Volume 53, No. 12, December 2005

“Communication Acoustics,” Jens Blauert (editor) - Journal of the Audio Engineering Society, Volume 54, No. 1/2, January/February 2006

“Acoustics and Psychoacoustics,” David M. Howard and Jamie Angus - Journal of the Audio Engineering Society, Volume 54, No. 11, November 2006

“Pro Audio Reference,” Second Edition, Dennis Bohn, Journal of the Audio Engineering Society - Journal of the Audio Engineering Society, Volume 54, No. 4, April 2007

“Worship, Acoustics, and Architecture,” Ettore Cirillo and Francesco Martellotta - Journal of the Audio Engineering Society, Journal of the Audio Engineering Society, Volume 55, No. 11, November 2007

“Sound FX Unlocking the Creative Potential of Recording Studio Effects,” Alexander U. Case - Journal of the Audio Engineering Society, Volume 55, No. 12, December 2007

“Surround Sound Up and Running,” Tomlinson Holman - Journal of the Audio Engineering Society, Volume 56, No. 9, September 2008

“Sound Reproduction Loudspeakers and Rooms,” Floyd E. Toole - Journal of the Audio Engineering Society, Volume 57, No. 1/2, January/February 2009

“Handbook for Sound Engineers,” 4th Edition, Glenn Ballou - Journal of the Audio Engineering Society, Volume 57, No. 7/8, July/August 2009

“Acoustics and the Performance of Music Manual for Acousticians, Audio Engineers, Musicians, Architects and Musical Instrument Makers,” 5th Edition Jürgen Meyer (translated by Uwe Hanson) - Journal of the Audio Engineering Society, Volume 58, No. 3, March 2010

“Sound for Film and Television” 3rd Edition, Tomlinson Holman - Journal of the Audio Engineering Society, Volume 58, No. 11, November 2010

“The Acoustics of Performance Halls Spaces for Music from Carnegie Hall to the Hollywood Bowl,” J. Christopher Jaffe - Journal of the Audio Engineering Society, Volume 59, No. 4, April 2011

“Acoustics and Audio Technology,” Mendel Kleiner - Journal of the Audio Engineering Society, to be published

“Grounds for Grounding,” Elya B. Joffee and Kai-Sang Lock - Journal of the Audio Engineering Society, to be published

Selected Product Development Projects - Neil A. Shaw

Aura Systems	1992 - 2005 Technical support for audio projects using inherently shielded neodymium speakers.
Peavey	1995 - 1997 Loudspeaker engineering for professional woofers and compression drivers, out-sourcing of electronics and speaker manufacturing, joint venture liaison.
Armstrong World Industries	1999 - 2002 Conception and product definition for active acoustic initiative. Product definition and development of ceiling tile speaker, and other projects.
Microsoft	1999 - 2000 Headset and headset element design for voice recognition product.
Cisco	1999 - 2000 Telephone and speaker-phone design for Internet telephone.
Intel	2000 Internet appliance sound system product
RPG	2001 - 2020 Technical and marketing support for this vendor of acoustical devices for architectural spaces.
Bohlender-Graebener	2001 - 2004 Technical support and loudspeaker engineering for planar diaphragm loudspeaker products.
Johns Manville	2002 Strategic product and market research and analysis.
Tri-path	2002 - 2006 Technical support and system engineering for digital audio power amplifiers.
Extron	2002 - 2003 Technical and material support for loudspeaker development and research.
Microsoft	2003 - 2006 Anechoic chamber design. Electroacoustic product testing protocol development.
University of Illinois	2008 - 2009 Transducer and power amplifier design and selection for food industry processing equipment.
Microsoft	2008 - 2009 Anechoic chamber design. Electroacoustic product testing protocol development.
KLA-Tencor	2010 Vibration isolation engineering for scanning electron microscope semiconductor wafer inspection equipment.
Microsoft	2011 Acoustic measurement and analysis for Kinect manufacturing end-of-line 100% test chamber.
ETC	2011 Noise analysis and noise control for electrically operated variable speed theater hoist equipment.

Selected Projects - Neil A. Shaw:

Arcadia City Council Chambers	Arcadia, California
Grossmont Civic Auditorium	El Cajon, California
Center for Faith and Life, Luther College	Decorah, Iowa
Concert Hall, University of Kentucky	Lexington, Kentucky
Swimming Pool, University of Riyadh	Riyad, Saudi Arabia
Oakland-Piedmont Municipal Courts	Oakland, California
2500 seat Auditorium, 700 seat Auditorium,	
250 seat Library Hall, Mosque and Minaret,	
Gymnasium, Fine Arts Recital Hall, 100 seat	
Museum Hall, 500 seat Lecture Rooms, 250	
seat Lecture Rooms, 1000 seat Banquet Hall,	
200 seat Meeting Rooms, 100 seat Meeting	
Rooms, University of Riyadh	Riyad, Saudi Arabia
Des Moines Civic Auditorium	Des Moines, Iowa
California School For the Blind	Hayward, California
South Coast Air Quality Management District	
Hearing Room	El Monte, California
First United Methodist Church	Santa Monica, California
George R. Moscone Convention Center	San Francisco, California
H. J. Kaiser Convention Center	Oakland, California
Carson Community Center	Carson, California
LAX Terminal One	Los Angeles, California
Crocker Bank Auditorium	Los Angeles, California
Wilshire Auditorium, Fullerton College	Fullerton, California
Salt Palace Convention Center Expansion	Salt Lake City, Utah
Metro Toronto Convention Center and Theater	Toronto, Ontario
Orpheum Theater Restoration	Davenport, Iowa
Athanaeum, Claremont College	Claremont, California
San Jose Federal Office Building	San Jose, California
Fairmont Hotel	San Jose, California
LAX Terminal Five	Los Angeles, California
First Presbyterian Church	Upland, California
Royal Saudi Air Force Hush Houses	Saudi Arabia
NCO Training Facility, March AFB	Riverside, California
Veterans Administration Out Patient Clinic	Los Angeles, California
Lied Center for the Performing Arts,	
University of Nebraska	Lincoln, Nebraska
MaMaison Hotel	Los Angeles, California
Escondido City Council Chambers	Escondido, California
Mercy Hospital	San Diego, California
Mercy Hospital	Sacramento, California
Jain Bhavan Worship Center	Santa Ana, California
Ojai Valley Inn	Ojai, California
Simon Wiesenthal Center and Holocaust Museum	Los Angeles, California
New Otani Hotel	Los Angeles, California
Oceanside City Council Chambers	Oceanside, California
Santa Monica Beach Hotel	Santa Monica, California
Greenwood Racetrack	Toronto, Ontario
Woodbine Racetrack	Toronto, Ontario
Mohawk Racetrack	Campbellville, Ontario
Toyota Training Center	Torrance, California
Fresno Art Center	Fresno, California
McLaren Children's Center	Los Angeles, California

Lindbergh Field West Terminal Expansion
 Richard M. Nixon Presidential Library
 Carnation Headquarters
 Los Angeles County Bar Association
 Los Angeles Federal Office Building
 Intercontinental Hotel
 Lake Avenue Congregational Church
 Hewlett Packard Presentation Center
 Dance Recital Hall and Auditorium,
 California State University
 Inyo County Superior Court
 Adele Platt Conference Center,
 City of Hope Medical Center
 Los Angeles County Emergency Operation Center
 Antonio B Won Pat International Airport
 Temple Adat Sholam
 Sound Stage 29/30, Paramount Pictures
 Executive Screening Room, Theater,
 Dubbing Theater, Metro-Goldwyn-Mayer
 Lakeview Terrace Rehabilitation
 Facility, Phoenix House of Los Angeles
 Physiological Acoustics Research
 Facility, UCLA Medical Center
 Performing Arts Center
 Crystal Harmony, Crystal Cruise Lines
 Integrated Service Facility,
 NASA/Dryden Research Facility
 Theater, Metro-Goldwyn-Mayer
 Santa Ana Theater
 Sammy Davis Jr. Festival Plaza
 City Hall, Council Chamber
 Video Conference Facility, Sony Music
 Legend of the Seas, Royal Caribbean Cruise Lines
 Orange County Branch Library
 Screening Room, Warner Brothers Animation
 Screening Room, Turner Feature Animation
 Las Vegas Motor Speedway
 Large Screening Room, Metro-Goldwyn-Mayer
 Japanese American National Museum
 Carson City Courthouse
 St. Mel Parish Center
 Congregation Ner Tamid
 Old Town Temecula Streetscape
 Grandeur of the Seas, Royal Caribbean Cruise Lines
 Disney Magic, Disney Cruise Lines
 Coral Sky Amphitheater
 First Chinese Baptist Church
 St. Mark Coptic Orthodox Church
 C-17 Assembly Facility, Douglas Aircraft
 Division, The Boeing Corporation
 Crisci's Restaurant
 JamSync Studios
 New Standard Post
 Media Artists, Pty
 The Lobster

San Diego, California
 Yorba Linda, California
 Glendale, California
 Los Angeles, California
 Los Angeles, California
 Los Angeles, California
 Pasadena, California
 North Hollywood, California

Long Beach, California
 Independence, California

Duarte, California
 Los Angeles, California
 Tamuning, Guam
 Westwood, California
 Hollywood, California

Santa Monica, California

Lakeview Terrace, California

Westwood, California
 Lancaster, California
 Los Angeles, California

Edwards, California
 New York, New York
 Santa Ana, California
 Las Vegas, Nevada
 Santa Monica, California
 New York, New York
 Miami, Florida
 Aliso Viejo, California
 Glendale, California
 Glendale, California
 North Las Vegas, Nevada
 Santa Monica, California
 Los Angeles, California
 Carson City, Nevada
 Woodland Hills, California
 Rancho Palos Verdes, California
 Temecula, California
 Miami, Florida
 Orlando, Florida
 West Palm Beach, Florida
 Los Angeles, California
 Los Angeles, California

Long Beach, California
 Brooklyn, New York
 Nashville, Tennessee
 Hollywood, California
 Madras, India
 Santa Monica, California

International Rectifier
 Antelope Valley Courthouse
 Fe Bland Forum, Santa Barbara City College
 Arizona Humane Society
 Cartoon Network
 Santa Monica High School
 Malibu High School
 Barnum Hall Auditorium
 Sobrato High School
 Temple Beth El
 Sacramento East End Project
 Gold Circle Films
 Denver City Hall Extension
 Fullerton City Hall
 Union Station Improvement
 Intimate Theater, California State University
 San Diego Convention Center, Sails Pavilion
 Temple Shir Ha-Ma'A Lot
 United States Courthouse
 Department of Education Office Complex,
 State of California
 MGM Constellation Headquarters
 Ketchum Advertising
 Orange County Register
 28th Church of Christ, Scientist
 Temple Solel
 NT Audio Mixing and QC Rooms
 River Cats Restaurant
 Caltrans District 7 Headquarters
 1221 Ocean Avenue
 Memorial Assembly Hall
 City of Manhattan Beach Annex
 Twohy Building
 Widget Post Production
 1st Church of Christ, Scientist
 Sunrise Assisted Living
 Sunrise Assisted Living
 Sunrise Assisted Living
 Academy of Motion Picture Arts and
 Sciences Boardroom
 Getty Villa Outdoor Amphitheater
 Ressler Residence
 American Honda
 Community Baptist Church
 Bernard Hodes Agency
 Houston's Restaurant
 Café R&D
 Getty Center Auditorium
 Mid-City Police Station
 College of Humanities, Arts, and Social Sciences
 Instruction and Research Facility,
 University of California
 Genomics Research Facility,
 University of California
 Panasonic Hollywood Laboratory

Tijuana, Baja California, Mexico
 Lancaster, California
 Santa Barbara, California
 Phoenix, Arizona
 Glendale, California
 Santa Monica, California
 Malibu, California
 Santa Monica, California
 Morgan Hill, California
 Aliso Viejo, California
 Sacramento, California
 Beverly Hills, California
 Denver, Colorado
 Fullerton, California
 Los Angeles, California
 Los Angeles, California
 San Diego, California
 Irvine, California
 Fresno, California

Sacramento, California
 Century City, California
 Venice, California
 Santa Ana, California
 Westwood, California
 Escondido, California
 Santa Monica, California
 Sacramento, California
 Los Angeles, California
 Santa Monica, California
 Manhattan Beach, California
 Manhattan Beach, California
 San Jose, California
 Culver City, California
 Beverly Hills, California
 Pacific Palisades, California
 Santa Monica, California
 Woodland Hills, California

Beverly Hills, California
 Los Angeles, California
 Beverly Hills, California
 Torrance, California
 Manhattan Beach, California
 Marina Del Ray, California
 Santa Monica, California
 Newport Beach, California
 Los Angeles, California
 Los Angeles, California

Riverside, California

Riverside, California
 Universal City, California

Sports Spectrum Club
 Sunrise Assisted Living
 Rose Bowl
 First Presbyterian Church
 Los Angeles Fire Department Headquarters
 New York City Transit No. 7 Line Extension
 Los Angeles County Metropolitan Transportation
 Authority Goldline
 South Lawn Project, University of Virginia
 Shangri-La Hotel
 Pacific Star, Princess Cruise Lines
 Allied Post
 Jet Propulsion Laboratory von Karman Auditorium
 Self Realization Fellowship
 Temple Beth Am
 Broome Library, California State University,
 Channel Islands
 California High-Speed Train Project
 Morongo Band of Mission Indians Administrative
 Complex
 The Buddy Group
 Café R&D
 Club 7969
 Brent's Deli
 Santa Cruz County Criminal Justice Complex
 Porto's Bakery
 Microsoft Hardware Group Audio Test Laboratories
 University of California, Irvine, Arts Building
 Los Angeles Unified School District High
 School No. 9
 Notre Dame High School
 St. Mark Presbyterian Church
 Fame Academy Poly High School
 FAA Sonic Boom Simulator (with the
 Pennsylvania State University)
 Metropolitan Transit District Hearing Room
 St. Peter and St. Paul Coptic Church
 Lifehouse Properties
 Wilson Well No.2
 Habitat for Humanity Lynwood Housing
 Whole Foods Plaza
 Habitat for Humanity Burbank Housing
 The Cork
 Cove Way Residence
 Habitat for Humanity Lawndale Housing
 Forest Lawn Chapel
 Rodney Bay and Gros Islet Villages
 Panasonic Avionics
 Capitol Records
 Art of Living Foundation
 Conexant Corporation
 University of California, Santa Barbara
 Faculty Center
 Bill and Melinda Gates Foundation
 J Restaurant and Lounge
 Newcom

Pacific Palisades, California
 Simi Valley, California
 Pasadena, California
 Santa Monica, California
 Los Angeles, California
 New York, New York

 Los Angeles, California
 Charlottesville, Virginia
 Santa Monica, California
 Santa Clarita, California
 Santa Monica, California
 Pasadena, California
 Los Angeles, California
 Los Angeles, California

 Camarillo, California
 State of California

 Banning, California
 Irvine, California
 Santa Monica, California
 West Hollywood, California
 Westlake Village, California
 Nogales, Arizona
 Burbank, California
 Redmond, Washington
 Irvine, California

 South Gate, California
 Sherman Oaks, California
 Newport Beach, California
 Sun Valley, California

 State College, Pennsylvania
 Los Angeles, California
 Santa Monica, California
 Pacific Palisades, California
 San Gabriel, California
 Lynwood, California
 Malibu, California
 Burbank, California
 Los Angeles, California
 Beverly Hills, California
 Lawndale, California
 Cypress, California
 St. Lucia
 Lake Forest, California
 Hollywood, California
 Los Angeles, California
 Newport Beach, California

 Santa Barbara, California
 Seattle, Washington
 Los Angeles, California
 Santa Monica, California

American School in Vietnam	Hanoi, Vietnam
Apple Yellowstone Anechoic Chamber Facility	Cupertino, California
Barnum Hall Continuing Renovation	Santa Monica, California
Malibu High School Auditorium Renovation	Malibu, California
John Adams Middle School Auditorium Renovation	Santa Monica, California
Westminster Presbyterian Church	Newbury Park, California
American School in Bombay	Mumbai, India
Temple Judea	Tarzana, California
Holy Angel Church	San Marino, California
Kroc Institute for Peace and Justice	
University of San Diego	San Diego, California

7 June 2012

EXHIBIT 2

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

TEL: (650) 589-1660
FAX: (650) 589-5062
dkey@adamsbroadwell.com

SACRAMENTO OFFICE

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

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

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. MESSING

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

*Not admitted in California.
Licensed in Colorado.

September 23, 2021

VIA EMAIL AND OVERNIGHT MAIL

Oliver Netburn, City Planner
Department of City Planning
City of Los Angeles
200 North Main Street, Room 763
Los Angeles CA 90012
Email: oliver.netburn@lacity.org

Re: Supplemental Comments on the Initial Study / Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017- 4735-MND CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR

Dear Mr. Netburn:

We write on behalf of the Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA") to provide supplemental comments on the Initial Study and Mitigated Negative Declaration ("MND") prepared by the City of Los Angeles ("City") for the Rendon Hotel Project ENV-2017-4735-MND CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR ("Project"), The Rendon, LLC (the "Applicant") proposes a one-story addition to an existing three-story hotel and the construction, use, and maintenance of an attached 15-story hotel building with 103 guest rooms and approximately 15,907 square feet of commercial space comprised of an art gallery, café, restaurant, and bar uses.¹

We previously submitted written comments on the MND ("Comment Letter") on March 3, 2021.² Based upon our subsequent review of the MND and supporting documentation, we conclude that the MND also fails to comply with the

¹ MND p.8.

² See D. Key, Comments on the Initial Study / Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR (March 3, 2021), in City's files L5073-006acp

requirements of the California Environmental Quality Act³ (“CEQA”) by failing to accurately describe the Project’s parking requirements, and failing to accurately analyze and mitigate all required transportation issues.

As explained in these comments, there is a fair argument that the Project will result in potentially significant impacts relating to transportation that are not adequately mitigated by the proposed mitigation in the MND. The City may not approve the Project until it prepares an environmental impact report (“EIR”) that adequately analyzes the Project’s potentially significant direct, indirect, and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts.

We prepared these comments with the assistance of civil and traffic engineer expert Dan Smith. Mr. Smith’s technical comments and curricula vitae are attached as **Attachment A**.⁴ The attached expert comments require separate responses under CEQA.⁵ We reserve the right to supplement these comments at later hearings and proceedings related to the Project.⁶

I. THE MND FAILS TO ACCURATELY DESCRIBE, ANALYZE, AND MITIGATE THE PROJECT’S TRANSPORTATION IMPACTS

A. The MND Fails to Provide a Consistent Description of the Project’s Parking Requirements

The MND contains an internally inconsistent description of the number of parking spaces that are required and would be implemented for the Project. This inconsistency renders the MND’s conclusions about the Project’s employee vehicle miles travelled (“VMT”) impacts unsupported, and deprives the MND from serving as a vehicle of intelligent public participation in the decision-making process, as required by CEQA.⁷

³ Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. (“CEQA Guidelines”).

⁴ **Attachment A**: Letter from Dan Smith re *Comments on Rendon Hotel Project (Case Number: ENV-2017-4735-MND)* (September 23, 2021) (“Smith Comments”).

⁵ 14 CCR § 15088(a), (c).

⁶ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

⁷ *County of Inyo v. County of Los Angeles* (1977) 71 Cal. App. 3d 185, 197.

L5073-006acp

The MND's Project Description states that, per the Los Angeles Municipal Code ("LAMC"), the Project is required to provide 56 parking spaces and provides a clear narrative description of the derivation of that number of spaces based on application of LAMC Section 12.21.A.4.⁸ It also notes that the 56 spaces would be provided off-site by private agreement.⁹ Further description of the derivation of the 56-parking space requirement is provided in Table 3.3.¹⁰

However, the Transportation Section of the MND states that LAMC would require the provision of **195 parking spaces** for the Project, without providing any explanation of how this substantially larger parking space total was derived.¹¹ The Appendix G-1 Transportation Study similarly indicates that the LAMC required parking total is 195 spaces, again without explaining how this total was derived.¹² A closer reading of LAMC Section 12.21.A.4.b demonstrates that the total parking spaces required for the Project would actually be 59 parking spaces minus 10% for a bicycle reduction, making the total required parking 53 spaces. The parking calculations in MND Table 3.3¹³ therefore also does not line up with the parking requirements under LAMC Section 12.21.A.4. As a result, the MND lacks adequate support for the applicable parking calculation conducted pursuant to LAMC Section 12.21.A.4.b, and provides no support whatsoever for Appendix G-1's reliance on a parking requirement of 195 spaces.

This inconsistency is critical since it directly influences whether the significant employee-based VMT impact disclosed in the MND Transportation section is accurate, or will be mitigated by compliance with TDM reduced parking strategies, as asserted in the MND.¹⁴

The MND's inconsistent description of parking requirements prevents the public from evaluating the accuracy of the MND's employee VMT calculations, as discussed further below, and prevents the MND from serving as a vehicle of intelligent public participation in the decision-making process, as required by CEQA. Appendix G-1's reliance on a higher parking requirement has the effect of

⁸ MND, p. 38; See also Smith comment letter, pp. 1-2.

⁹ *Id.*

¹⁰ MND, p. 42; Smith comment letter, pp. 1-2.

¹¹ MND, p. 177.

¹² MND, p. 176; MND Appendix G, pp. 76.

¹³ MND, p. 42.

¹⁴ Smith comment letter, pp. 1-2; MND, pp. 172, 177.

minimizing the Project's impacts by not accurately describing the Project's transportation-related features.¹⁵

B. There is Substantial Evidence Supporting a Fair Argument the Project May Result in Significant, Unmitigated Transportation Impacts

CEQA requires that any assumptions used to estimate VMT and adjustments to model outputs be explained in the MND.¹⁶ The MND's reliance on 195 required parking spots as an input for their VMT calculation is unsupported and inconsistent with other sections of the MND, which state that only 56 spots are required.¹⁷ As a result, it is unclear the MND's employee VMT calculations may be inaccurate

The MND's Transportation section states that the Los Angeles Department of Transportation ("LADOT") Vehicle Miles Traveled ("VMT") Calculator estimates that the Project would generate a Project work VMT per employee of 9.2 miles.¹⁸ This is considerably above the applicable significance threshold for the Central APC Area of 7.6 miles per employee, and any level above 7.6 would be considered a significant impact according to Mr. Smith.¹⁹

The City tries to address this via Mitigation Measure MM-TR-2's reduction of on-site parking from based on the elimination of 195 spaces described in Appendix G-1. This reduction of parking spaces would result in the LADOT VMT Calculator predicting that the VMT per Employee would drop to 7.4 miles and would push the VMT under the significance threshold of 7.6 miles.²⁰ However, based on the parking requirements discussed in the MND's Project Description section, this calculation assumes too much of a reduction because the MND elsewhere states that only 56 spaces are required pursuant to the LAMC, not 195 as the City's VMT analysis claims.²¹ Assuming the MND accurately relies on LAMC Section 12.21.A.4 to calculate the Project's parking requirements, the VMT calculations in Appendix G-1 (and MM TR-2) incorrectly rely on a reduction in parking spaces that is four

¹⁵ *County of Inyo*, 71 Cal.App.3d at 197; *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 CA4th, 645, 655.

¹⁶ CEQA Guidelines, § 15064.3, subd. (b)(4).

¹⁷ *County of Inyo*, 71 Cal.App.3d at 197; *San Joaquin Raptor Rescue Ctr.*, 149 CA4th. at 655.

¹⁸ MND, pp. 177-179; Smith comment letter, p. 2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See MND pp. 38 vs. 77.

L5073-006acp

times greater than actually required.. The City has yet to effectively account for the discrepancy in the amount of claimed parking spot reductions in their analysis as is required under CEQA.²²

This erroneous analysis led to the MND presuming, pursuant to CEQA Guidelines section 15064.3(b)(1), that a reduction in the Project's VMT from parking reductions can be presumed to create a less than significant transportation impact. A VMT analysis relying on the correct amount of parking spots, 56, may not result in a VMT reduction and thus may actually indicate a significant, unmitigated transportation impact.²³ There is substantial evidence to support a fair argument that the City's reliance on 195 parking spots incorrectly suggested a VMT reduction would occur. The City must properly analyze the VMT impact by performing the same analysis using the 56 parking spots required under LAMC Section 12.21.A.4 (or 53 spots, if calculated with the Section's enumerated reduction for bicycle parking).

Moreover, the fact that the parking would be located off-site, would increase the VMT by valet maneuvers and/or searching the neighborhood for available on or off-street spaces by employees and would thus offset the normally generalized benefits of limited parking. It is also reasonably foreseeable that, to the extent that parking shortage encourages alternate modes of transportation, a share of these alternate mode trips may be served by TNCs (also known as ridesharing trips by companies like Uber and Lyft) that generate more VMT than ordinary drive-and-park trips because of the TNC vehicle's need to make an extra trip to make a pickup or circulate for the next trip after a drop-off. The City has yet to effectively account for the impact of TNC trips.²⁴

II. 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. 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 Mr. Smith. This is the only way the

²² CEQA Guidelines, § 15064.3, subd. (b)(4).

²³ CEQA Guidelines, § 15064.3, subd. (b)(1).

²⁴ Smith comment letter, p. 2.

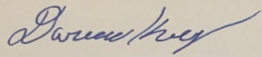
L5073-006acp

September 23, 2021
Page 6

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 attention to these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darien Key", is placed over a light beige rectangular background.

Darien Key

DKK:acp

Attachment

L5073-006acp

ATTACHMENT A



September 23, 2021

Mr. Darien Key
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Subject: Rendon Hotel Project IS/MND

Dear Mr. Key:

Per your request, I reviewed the Draft Initial Study/Mitigated Negative Declaration (the "IS/MND") for the Rendon Hotel Project (the "Project") in the City of Los Angeles (the "City"). My review is with respect to transportation and circulation considerations.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and over 50 years of professional consulting practice in these fields. I have both prepared and reviewed the transportation and circulation sections of numerous documents related to compliance with the California Environmental Quality Act ("CEQA"). My professional resume is attached.

My comments on the subject IS/MND follow.

The IS/MND's Description of Los Angeles Municipal Code Parking Requirements Applicable to the Project in the Transportation Section Are Inconsistent With Those Cited in the Project Description

The IS/MND Project Description states at page 38 that, per Los Angeles Municipal Code ("LAMC"), the Project is required to provide 56 parking spaces and provides a clear narrative description of the derivation of that number of spaces. It also notes that the 56 spaces would be provided off-site by private agreement. Further description of the derivation of the 56 parking space requirement is provided in Table 3.3 at page 42. However, the Transportation

Section of the IS/MND at page 177 states that LAMC would require provision of 195 parking spaces for the Project without providing any explanation of the derivation of this wildly different parking space total. The Appendix G-1 Transportation Study also at page 76 indicates the LAMC required parking total is 195 spaces, again without explanation of the derivation of this total. This inconsistency is critical since it directly influences the extent to which the Project complies with TDM reduced parking supply strategies, and whether the significant employee based VMT impact disclosed in the IS/MND Transportation section would be reduced to less than significant levels, as stated in the IS/MND at page 172/177.

The IS/MND Discloses That the Project Would Create a Significant Employee-Based Vehicle Miles Traveled Impact. But It Assumes That a Non-Existent Reduction In Project Parking From 195 Spaces to 0 Spaces Would Mitigate the Significant Impact. This Presumed Mitigation Is Derived from a Misinterpretation of LAMC of Parking Requirements

The IS/MND Transportation section states that the LADOT VMT Calculator estimates that the Project would generate a Project work VMT per employee of 9.2 miles. This is considerably above the applicable significance threshold for the Central APC Area of 7.6 miles per employee, and hence is a significant impact. However, it indicates that the Mitigation Measure MM-TR-2's reduction of on-site parking from the fictionally claimed 195 spaces per LAMC to 0 would result in the LADOT VMT Calculator predicting that the VMT per Employee would drop to 7.4 miles which is less than the significance threshold of 7.6 miles. However, since the required spaces under LAMC are only 56 and the 56 spaces are to be provided off-site by agreement, there is no reduction from the parking space requirement of LAMC.

Moreover, the fact that the parking would be located off-site, requiring extra VMT by valet maneuvers and/or searching the neighborhood for available on or off-street spaces by employees would offset benefits of limited parking. It is also reasonably likely that, to the extent that parking shortage encourages alternate modes, a large share of trips would be served by TNCs (also known as ridesharing trips by companies like Uber and Lyft) that generate more VMT than ordinary drive-and-park trips because of the TNC vehicle's need to make an extra trip to make a pickup or circulate for the next trip after a drop-off. The City has yet to effectively account for the impact of TNC trips.

Conclusion

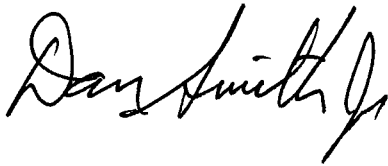
This concludes my current comments on the Rendon Hotel Project IS/MND. Given the foregoing, the transportation section of the IS/MND for this Project should be revised and reissued in draft status. In particular, a formal VMT

Mr. Darien Key
Adams Broadwell Joseph & Cardozo
March 3, 2021
Page 3

analysis must be prepared under consistent assumptions with the Project Description.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President



SMITH ENGINEERING & MANAGEMENT

DANIEL T. SMITH, Jr. **President**

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

PRATT • TRANSPORTATION • SAN FRANCISCO

5311 Lowry Road, Union City, CA 94587 tel: 510.489.9477 fax: 510.489.9478

SMITH ENGINEERING & MANAGEMENT, INC. 1993-2000

5311 Lowry Road, Union City, CA 94587 tel: 510.489.9477 fax: 510.489.9478

Transportation Centers. Project manager for Daly City Intermodal Study which developed a \$7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking .

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard *et al.*, U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

EXHIBIT 3

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

TEL: (650) 589-1660
FAX: (650) 589-5062
dkey@adamsbroadwell.com

SACRAMENTO OFFICE

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

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

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO
MICHAEL R. SEVILLE

Of Counsel

MARC D. JOSEPH
DANIEL L. CARDOZO

March 31, 2022

*Not admitted in California.
Licensed in Colorado.

Via Online Submission

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

Via Email Only

Oliver Netburn, City Planner
Los Angeles City Planning Department
200 N. Spring St., Room 763
Los Angeles, CA 90012
Email: oliver.netburn@lacity.org

**Re: Appeal to the Los Angeles Area City Planning Commission of the
March 17, 2022 Zoning Administrator Determination in the Rendon
Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-
CUX-ZV-ZAA-SPR; ZA 2021-9890-ZV**

Dear City Planning Commissioners, Mr. Netburn:

On behalf of the Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA") we are writing to appeal the Zoning Administrator's March 17, 2022 approval of the Mitigated Negative Declaration ("MND"), including the March 2022 Errata to the MND ("Errata", collectively "Revised MND"), and Zoning Variance for the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR; ZA 2021-9890-ZV ("Project"). The Zoning Administrator issued these approvals without a public hearing and issued a Letter of Determination ("LOD") on March 17, 2022.

The original project, proposed by Rendon, LLC (the "Applicant"), proposed a one-story addition to an existing three-story hotel and the construction, use, and maintenance of an attached 15-story hotel building with 103 guest rooms and approximately 15,907 square feet of commercial space comprised of an art gallery,
L5073-008j

café, restaurant, and bar uses.¹ The Revised MND includes an expansion of the Project to add 42 new single room occupancy apartment units (“SROs”) at an off-site location at 719-725 East 5th Street, the El Sol Hotel building.² Addition of the SROs will expand the Project’s footprint and requires additional interior construction activities to renovate the SROs in the El Sol Hotel building.³ In addition to substantially altering the Project description, the Revised MND acknowledges that the proposed expansion of the Project will result in increased environmental impacts that were not considered in the original MND, including additional construction and operational air emissions, energy impacts, noise impacts, increased greenhouse gas (“GHG”) emissions, hazardous materials, transportation, and utilities and public services.⁴ The Revised MND includes new qualitative and quantitative analyses of each of these impacts which were not included in the original MND.

Rather than prepare and circulate an environmental impact report (“EIR”) for the revised Project, or revise and recirculate the MND for additional public comment pursuant to the California Environmental Quality Act (“CEQA”), the City of Los Angeles (“City”) illegally labelled the Revised MND as an “Errata” and failed to circulate it for public review before the Zoning Administrator approved it. This was a clear violation of CEQA’s requirements that a project’s potentially significant impacts must be analyzed in an EIR, and that any substantive changes to a previously circulated CEQA document require recirculation pursuant to CEQA.⁵ The Revised MND and LOD also fail to acknowledge or respond to CREED LA’s comments and expert comments on the original MND, or the MND comments of any other members of the public, demonstrating that the Zoning Administrator failed to consider these comments before adopting the Revised MND and approving a portion of the Project, in further violation of CEQA.⁶

¹ MND p.1, 8.

² Revised MND, p. 12.

³ Revised MND, p. 13.

⁴ Revised MND, pp. 12-27.

⁵ See Pub. Resources Code, §§ 21100; 21080 (d), 21082.2, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15064, subds. (f)(1), (h)(1), 15088.5, 15073.5; *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123 (*Laurel Heights II*); *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 (*Quail Botanical*).

⁶ CEQA Guidelines, § 15074(b).

The City also failed to hold a public hearing before approving the Zoning Variance, in violation of the City's municipal code. LAMC Section 12.27 requires the Zoning Administrator to hold a public hearing on an application for a zoning variance unless there is substantial evidence in the record demonstrating that the project (i) will not have a significant effect on adjoining properties or on the immediate neighborhood, and (ii) is not likely to evoke public controversy.⁷ CREED LA's MND comments of March 3, 2021 and September 23, 2021 included expert comments which provided substantial evidence supporting a fair argument that the original Project would have significant, adverse air quality, noise, and health risk impacts on the immediate neighborhood of the Project, thus meeting the first criteria for a public hearing on the Zoning Variance. The Revised MND failed to respond to or mitigate these impacts, and failed to adequately analyze impacts associated with the expansion of the Project, and therefore lacks substantial evidence demonstrating that the Revised Project will not have significant effects on adjoining properties or the surrounding neighborhood. The fact that CREED LA and other members of the public filed comments identifying deficiencies in the MND and asking the City to prepare an EIR for the Project demonstrate that the Project "evokes public controversy," thus meeting the second criteria for a public hearing on the Zoning Variance. The City has not responded to CREED LA's MND comments, has not prepared an EIR for the Project, and has not corrected any of the errors and omissions in the original MND. Therefore, the public controversy remains ongoing.

Pursuant to the City of Los Angeles ("City") appeal procedures, we have provided an electronic copy of this Justification for Appeal letter, the Appeal Application (form CP-7769), and the original Determination Letter. We have also paid the required appeal fee via the Department of City Planning Online Application Portal.

The reason for this appeal is that the Zoning Administrator abused its discretion and violated CEQA when it approved a Zone Variance and adopted the Project's Revised MND without a public hearing. CEQA requires that the potential impacts of this Project be evaluated in an EIR, not in an MND, because substantial evidence exists that the Project may have significant, unmitigated environmental impacts to air quality and public health, from GHG emissions and noise, and on transportation.

⁷ LAMC Section 12.27(C)(i), (ii).
L5073-008j

Our March 3, 2021 and September 23, 2021 comment letters on the Project are attached hereto.⁸ We incorporate the letter and attached expert comments by referenced herein. The specific reasons for this appeal are outlined in detail in those letters and summarized below.

In short, the Zoning Administrator lacked the authority to approve the MND and the Zoning variance on March 17, 2022 and violated the due process rights of CREED LA and other members of the Project by adopting the Revised MND and approving a portion of the Project without a public hearing. The Zoning Administrator lacked the authority because: (1) the approval of the Zoning Variance and Revised MND under a separate project from the Rendon Hotel was premature and resulted in piecemealing of the approvals for a single project; (2) the City failed to consider our March 3, 2021 and September 23, 2021 comments regarding the MND, thus violating CEQA Guidelines Section 15074(b); (3) the “Errata” fails to conform to the requirements of CEQA Guidelines Section 15073.5 which necessitated, at a minimum, recirculation of the original MND for additional public comment on the new information and evidence addressing the environmental impacts of the Revised Project; (4) approval of the Zoning Variance resulted in premature approvals which are not allowed under CEQA and *Save Tara*, and (5) approval of the Zoning Variance without a public hearing was a due process violation.

In addition to the procedural issues above, the record contains substantial evidence that supports a fair argument that that Project will cause: (1) significant, unmitigated cancer risk from toxic air contaminant emissions, (2) potentially significant, unmitigated impacts from GHG emissions, (3) significant, unmitigated impacts from noise, (4) significant, unmitigated impacts on transportation, and (5) significant unmitigated cumulative impacts. These impacts will be further compounded and exacerbated by the renovation of the El Sol Hotel, as described in the Errata.

⁸ See **Exhibit 1**: Letter from Darien Key to Oliver Netburn re: Comments on the Initial Study/Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR, March 3, 2021; **See Exhibit 2**: Letter from Darien Key to Oliver Netburn re: Comments on the Initial Study/Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR, September 23, 2021.
L5073-008j

I. REASONS FOR APPEAL

CREED LA appeals all actions taken by the Zoning Administrator regarding the Project as described in the LOD dated March 17, 2022. The reasons for this appeal is set forth in the attached comments and exhibits, including CREED LA's MND comment letter dated March 3, 2021. Reasons for the appeal include violations of CEQA and State and local land use codes. We incorporate by reference all comments included in Exhibit 1. A brief summary of the 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. We reserve the right to supplement this appeal at later hearings and proceedings related to the Project.⁹

II. THE ZONING ADMINISTRATOR'S PROJECT APPROVAL PROCESS FOR APPROVAL VIOLATED PROCEDURAL AND CEQA REQUIREMENTS

The Zoning Administrator violated the LAMC and CEQA by approving a portion of the Revised Project before the rest of the Project is considered by the CPC, and by adopting the Revised MND without public comment or a public hearing. The CPC should rescind all approvals issued by the Zoning Administrator on March 17, 2022, require that an EIR be prepared for the Project, and require the Zoning Administrator to conduct a public hearing on the Zoning Variance.

A. The Approval Of The Zoning Variance and MND Under A Separate Project From The Rendon Hotel Resulted In "Piecemealing" Of The Project

The Rendon Hotel Project and El Sol Hotel Project are two components of the same Project. Yet, the City prepared two separate land use cases with no connection between the two in their online data, despite abundant facts demonstrating that the El Sol Hotel renovation would not occur or be needed without the Rendon Hotel's requirement to replace residential units it was demolishing, and despite the Revised MND's admission that the El Sol Hotel is part of the Rendon Hotel Project.

⁹ 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
L5073-008j

The LOD and Revised MND explains that the City's Residential Hotel Unit Conversion and Demolition Ordinance (Ord. No.179,868), the Wiggins Settlement Agreement, and the City's CRA Guidelines and Controls for Residential Hotels in the Central Industrial Redevelopment Project Area require that the Rendon Hotel replace the 42 SRO residential units present at the Rendon Hotel site on a one-to-one basis subject to the conditions in the ordinance and settlement agreement. The Applicant chose to do so at the El Sol hotel located at 719-725 E. 5th Street.¹⁰ The fact that the SROs are purportedly required by the City further demonstrates that the El Sol Hotel component is part of the overall Rendon Hotel Project, and should be processed by the City as a single Project. This replacement is required by the City, but the separation of this replacement into two separate City cases results in "piecemealing" or "segmenting" which confuses the public and has resulted in a truncated CEQA process which the public had reasonably expected would not be addressed until the CPC considers the rest of the Project at its April 2022 CPC hearing.

For context, the Rendon Hotel Project is classified under two separate cases for the City: (1) ENV-2017-4735-MND and (2) CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR-RDP. It is a common practice by the City to include both an environmental review case number which in this case indicates it is an MND review that started in 2017 and a case number that governs the reviewing authority which in this case is the City Planning Commission, with the process starting in 2017, and the entitlements sought: a general plan amendment, a zoning change, a height district change, a conditional use permit for beverages, a conditional use permit for dancing, a zoning variance, a zoning administrators adjustment, and a site plan review. These two cases (1) ENV-2017-4735-MND and (2) CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR-RDP are considered "related cases" in the City's Planning Document Information System ("PDIS").¹¹ Thus a review of the "related cases" for each case number would indicate that only these two cases are related to the Rendon Hotel.

¹⁰ See generally, *Bozung v. LAFCO*, 13 Cal.3d 263, 283-84 (1975); *City of Santee v. County of San Diego*, 214 Cal.App.3d 1438, 1452 (1989); *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App.3d 151, 165 (1985).

¹¹ See ENV-2017-4735-MND "related cases" PIDAS entry at <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjE3MTI40>; See CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR-RDP "related cases" PIDAS entry at <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjE3MTI30>.
L5073-008j

On the other hand, all environmental review and permit review for the El Sol Hotel is found under ZA-2021-9890-ZV and ENV-2021-9891-CE with those cases being “related cases” under PDIS as well.¹²

The City revised the original MND to include the El Sol Hotel component of the Project. While this approach is correct, the manner in which the City did so violated CEQA and the municipal code because the City failed to provide public notice that the Revised MND for the entire Rendon Hotel Project would be approved at a hearing for a different City land use case.

A review of both the Revised MND and the Errata cover pages indicates that the Applicant is a “The Rendon LLC.”¹³ Additionally, if the cases were truly separate the environmental review for the El Sol would not be combined in the same CEQA document. These facts demonstrate that the El Sol and Rendon are indeed one Project.

Here, the City first analyzed the original Project via an MND indicating one set of environmental impacts, but then bootstrapped its environmental review of the El Sol Hotel component over a year later as an “errata” which was then approved in a completely separate proceeding apart from the Rendon Project.¹⁴ While these facts are more than enough to demonstrate piecemealing, the March 17 hearing further compounded issues because the public hearing was waived since the Chief Zoning Administrator determined the project would not have a “significant effect” or “create public controversy” even though there was substantial evidence in the record to the contrary.

The City must link the Rendon Hotel and El Sol Hotel project components together under a single City case, hold a public hearing on the Zoning Variance for the Project, and must prepare an EIR to fully disclose, analyze, and mitigate the individual and cumulative impacts of the Rendon Hotel and the El Sol Hotel Project

¹² See ENV-2021-9891-CE “related cases” PIDAS entry at <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjUyOTc30>; See ZA-2021-9890-ZV “related cases” PIDAS entry at <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjUyOTc20>.

¹³ MND Cover Page; Errata Cover Page.

¹⁴ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal. App. 4th 1333, 1340 (serial approval of multiple small housing and subdivision projects by same applicant in same location, leading to single large development project).

components together. The EIR must analyze the environmental effects of other phases or future expansions of a project if the other activities are reasonably foreseeable consequences of the initial project.¹⁵

B. The Zoning Administrator's Findings Violated CEQA and the LAMC and Were Not Supported by Substantial Evidence

The Zoning Administrator's approval of the Revised MND and Zoning Variance without considering public comments submitted on the original MND, and without a public hearing violated CEQA and the LAMC and rendered the LODs' findings unsupported.

1. The Zoning Administrator Failed to Consider Public Comments on the MND In Violation of CEQA Guidelines Section 15074(B)

CEQA requires that a lead agency must consider public comments on a circulated MND.¹⁶ Neither the Revised MND or the LOD discuss, respond to, or attach CREED LA's MND comments. The Zoning Administrator therefore failed consider any public comments regarding the MND before rendering its March 17 decision to approve the Project. The LOD states that the Zoning Administrator considered the "whole of the administrative record" including the MND, the Errata, and "all comments received."¹⁷ Further on in the LOD under the Finding of Facts though the Public Correspondence section claims no public comments were received.¹⁸ These statements are patently incorrect, because CREED LA and other members of the public filed comments on the MND which were not included in the Zoning Administrator record. These statements are also specious, given that the City failed to provide prior public notice of the Zoning Administrator's action, failed to hold a public hearing, and failed to circulate the Revised MND for public comments. These actions by the City deprived the public of the opportunity to provide comments on the Zoning Administrator's actions before the actions were taken.

¹⁵ *Bozung*, 13 Cal.3d at 283–284.

¹⁶ 14 C.C.R. § 15074.5(b).

¹⁷ LOD, p. 1.

¹⁸ LOD, p. 7.

Thus, the determination made by the Zoning Administrator is both inconsistent in its own claims regarding public comment, and unsupported by the evidence in the record. The City must remedy this by upholding this appeal, vacating the Zoning Administrator's decision, remanding the Project to staff to prepare an EIR for the Project, and requiring the Zoning Administrator to conduct a public hearing on the Zoning Variance.

2. The “Errata” Fails To Conform To The Requirements Of CEQA Guidelines Section 15073.5

The Errata to the MND was provided to our office on March 18, 2022 – after it had already been adopted by the Zoning Administrator.¹⁹ Additionally, our office only received a copy of the Appendices to said Errata on March 28, 2022, which is just three days before the Appeal deadline. Furthermore, these changes are a far cry from minor or insignificant modifications appropriate for an Errata.

CEQA Guidelines permits an agency to forego recirculation of an MND, in relevant part, if (1) mitigation measures are replaced with equal or more effective measures; (2) new revisions to the project are added in response to comments on the project's identified effects, which are not new and avoidable significant effects; (3) measures or conditions of approval that are added after circulation of the negative declaration that are not required by CEQA, do not create significant environmental effects, and not necessary to mitigate an avoidable significant effect; and (4) situations where new information is added to the negative declaration that merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.²⁰ The City even lists out these requirements from CEQA Guideline Section 15073.5 on the first page of the Errata.²¹

An errata, by contrast, is a clerical document used to correct minor errors in text in a short or minor document revision; it does not add new text, nor does it remove existing text.²²

¹⁹ See **Exhibit 3**: Email from City Planner Oliver Netburn to Adams Broadwell, March 17, 2022 at 11:07 pm.

²⁰ 14 C.C.R. § 15073.5(c)(2)-(4).

²¹ MND, p. 1.

²² Black's Law Dictionary, 2nd Ed.
L5073-008j

It is unclear which provision the City is attempting to rely on for its claims that no substantial revisions occurred, but there is no reasonable question that an entire new environmental analysis of a new building does not qualify as a “minor modification” to the existing MND.²³

The City may attempt to rely on a claim that, because no “new avoidable significant effect” was identified, the need for recirculation does not exist. This is incorrect. New substantive environmental analysis in an MND requires public review and comment under CEQA. Additionally, any claims to this effect are patently wrong due to our office’s previous MND comments, which introduced substantial evidence into the record regarding significant effects to air quality, energy, GHG, hazards, land use, noise, and transportation. Thus, this Revised Project’s addition of further environmental impacts to the previously identified issues compounds existing significant effects disclosed in the original MND, requiring recirculation of the MND at a minimum, and preparation of an EIR in order to fully comply with CEQA.

3. The “Errata” And Its Underlying Appendices Have Not Been Made Available To The Public For Public Comment

As discussed in this appeal letter there is substantial evidence for a fair argument that there are significant impacts which thus require the MND to be recirculated. Additionally CEQA requires that all documents referenced, incorporated by reference, and relied upon in an MND be available for review and “readily accessible” during the entire comment period.²⁴ The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the CEQA review period invalidates the entire CEQA process and that such a failure must be remedied by permitting additional public comment.²⁵ It is also well settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.²⁶ By failing to make all documents and underlying data referenced in the MND Errata “readily available,” during a recirculation comment period the City is violating the procedural mandates of CEQA.²⁷

²³ 14 C.C.R. § 15073.5(c)(2)-(4).

²⁴ Pub. Resources Code §§ 21092(b)(1); 14 Cal. Code Regs. § 15072(g)(4).

²⁵ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

²⁶ *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

²⁷ Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4).

As of the date of this appeal letter, neither the Errata nor its underlying Appendices have been made available to the public via the Planning Departments website or the PIDAS system for either the Rendon Hotel or El Sol Hotel case numbers.²⁸ While our office did receive a copy of the Errata on March 17, 2022 and a copy of the appendices on March 28, 2022, a general member of the public would not even know these documents exist, that changes had been made to the MND to include an additional building, or that a decision was made without a hearing which then approved said MND without a review of any public comments on the MND. The procedures used in the approval of the MND make a mockery of CEQA's requirements that an MND not be approved by hidden studies.

Without this critical information, our clients and other members of the public were unable to meaningfully review and comment on the Errata per a public comment period and are deprived of the opportunity to review the supporting information for the MND and the Errata and provide public comment. The City's actions violate CEQA disclosure requirements and have resulted in a violation of Resident's due process rights.

C. Approval Of The Zoning Variance Resulted In Premature Approvals Which Are Not Allowed Under CEQA And *Save Tara*.

The Zoning Administrator approved the Revised MND and issued the LOD on March 17, 2022 in conjunction with approval of only one of the Project's entitlements, the Zoning Variance. The Project's remaining entitlements are still pending final approval by the CPC and City Council based on future Planning Commission's approval recommendations for a general plan amendment, a zoning change, a height district change, a conditional use permit for beverages, a conditional use permit for dancing, a zoning variance, a zoning administrators adjustment, and a site plan review. The Project is therefore still undergoing its initial approval process and the Zoning Administrator approval was therefore premature and in violation of CEQA.

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],"²⁹ then make a mandatory

²⁸ See FN 11-12.

²⁹ PRC § 21080(a).
L5073-008j

finding that the MND has been “completed in compliance with CEQA.”³⁰ The Zoning Administrator lacked the legal capacity to make those determinations because the Project’s future, scope, and the extent of its entitlements and its environmental impacts remained uncertain at the time the Zoning Administrator conducted its hearing on the Project. The Zoning Administrator also lacks decision-making authority under the LAMC for the majority of the Project’s entitlements, and could not therefore approve the Revised MND for the Project as a whole.

CEQA mandates that agencies refrain from approving and adopting an MND before full consideration of all aspects of a project.³¹ The Zoning Administrator’s actions in approving the Revised MND before the majority of the Project’s entitlements had been considered by the Commission or City Council was a clear violation of CEQA, which “skirt[red] the purpose of CEQA by segregating environmental review of the [MND] from the project approval.”³²

As the courts have explained, “[a] decision on both matters must be made by the same decision-making body because ‘... CEQA is violated when the authority to approve or disapprove the project is separated from the responsibility to complete the environmental review.’”³³ The Commission’s ensuing review under CEQA’s subsequent review standards for the Project’s remaining entitlements would be equally improper because the Project has not received final approval from the City and the Zoning Administrator’s Revised MND approval was facially invalid.

The Planning Commission should uphold this appeal, vacate the Zoning Administrator’s approval of the Revised MND and approval of the Zoning Variance, and vacate its CEQA findings.

³⁰ 14 CCR § 15090(a)(1).

³¹ 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.

³² *California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325, 1341.

³³ *Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340, 360, citing *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 731.
L5073-008j

D. The Zoning Administrator Lacked Substantial Evidence to Make Findings Under LAMC Section 12.27 To Waive The Public Hearing

The LOD claims to have made the required findings that allowed the Zoning Administrator to waive the public hearing under LAMC Section 12.27.³⁴ LAMC Section 12.27 requires the following two factors to exist to waive a public hearing on a zoning variance:

1. [The Project] will not have a significant effect on adjoining properties or on the immediate neighborhood; or
2. is not likely to evoke public controversy.

The Project fails both of these factors and thus was required to have a public hearing.

First, the Project is likely to have a significant impact on adjoining properties from its unaddressed air quality, TAC, GHG, noise, and transportation issues discussed herein and in CREED LA's MND comments. Thus, there is already substantial evidence in the record supporting a fair argument that the Project will have significant impacts on the immediate neighborhood that the City has not mitigated. Additionally, given the residences that share a wall with the El Sol Hotel directly to the west at the Edward Hotel, the LOD fails to provide substantial evidence demonstrating that there are no new significant impacts from air quality, TAC, GHG, noise, and transportation on the adjoining properties and immediate neighborhood surrounding the El Sol Hotel.

Second, the MND had already created public controversy during its initial public comment period. The public comments originally filed during that comment period, including CREED LA's, demonstrates that members of the public have identified major deficiencies in the City's environmental review of the Project which have not yet been resolved. Thus, the record contains substantial evidence demonstrating that the Project has evoked public controversy due to the outstanding significant impacts from air quality, TAC, GHG, noise, and transportation.

³⁴ LOD, pp. 7-11.
L5073-008j

The City must remedy this by vacating the Zoning Administrator's approvals and requiring a public hearing on the Zoning Variance.

III. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS THAT REQUIRE THE CITY TO PREPARE AN EIR

CREED LA's MND comments included expert comments which provided the City with substantial evidence supporting a fair argument that the Project has several undisclosed and unmitigated environmental and public health impact which require further analysis under CEQA. The Revised MND did not respond to these issues, and did not require any new or additional mitigation measures to address the significant impacts identified in CREED LA's comments. Given that the City has not addressed or made changes to the following issues regarding air quality, energy, GHG, hazards, land use, noise, and transportation, the record still contains substantial evidence supporting a fair argument that significant environmental impacts exist which require an EIR. Additionally, the Errata presents new significant effects because the addition of 42 new SORs at a new location compounds the already existing significant impacts, still without appropriate mitigation.

A. There is Substantial Evidence Supporting a Fair Argument that the Revised MND Underestimates and Fails to Properly Mitigate Air Quality Impacts

We previously provided substantial evidence showing that the Project's Air Quality impacts would be significant because: (1) the MND failed to properly calculate construction and operational emissions in the CalEEMod software resulting in understated air quality impacts and (2) the MND failed to include a quantified health risk analysis ("HRA") or require additional mitigation in response to our expert's HRA, which established that cancer risks from the Project exceed the SCAQMD threshold of 10 in one million. Additionally, the Errata does not discuss TACs at all, and thus reliance on the original MND's conclusion to have less than significant impacts is not supported by substantial evidence because the MND did not consider the TACs. These issues are only compounded by the addition of emissions from work on the El Sol Hotel, and are thus likely to further exacerbate the Project's existing significant impacts on air quality.

B. The Project Will Cause Significant, Unmitigated Impacts from Greenhouse Gas Emissions

We previously provided substantial evidence showing that the Project's GHG emissions will not comply with "applicable plans, policies, regulations and requirements adopted to" reduce GHGs. The City has not addressed the (1) incorrect and unsubstantiated inputs into the CalEEmod analysis which impermissibly lowered the GHG emissions (2) the GHG analysis fails to properly account for VMT emissions since the MND grossly undercalculated VMT for the Project; (3) the MND's unsubstantiated air model indicated a potentially significant impact when comparing to other MT CO₂e thresholds set by CARB and AEP; (4) the MND failed to consider performance-based standards under CARB's scoping plan, SCAG's RTP/SCS, and SB 375's RTP/SCS daily VMT per capita target; and (5) the MND fails to adopt all feasible mitigation to reduce these significant GHG impacts.

The Revised MND did not respond to these comments or correct any of the errors in the City's original GHG analysis. In addition to these previously unaddressed issues, the Errata claims to have the same base mobile Project GHG emissions of 591.04 CO₂e/MT year, even though the Errata's transportation section notes that there will be an additional 294 VMT each day due to the 42 additional SRUs.³⁵ The Errata therefore compounds the errors from the original MND and includes new errors, further demonstrating that the City's GHG analysis is inaccurate and lacks substantial evidence, and should be remedied by preparing an EIR for the Project.

C. The Project May Result in Significant, Unmitigated Noise Impacts

We previously provided substantial evidence showing the MND's failures regarding the baseline noise analysis, and inadequacy of the proposed mitigation measures. These issues remain unresolved, and the Project's noise impacts at the Rendon Hotel site remain unmitigated. These impacts that the City failed to disclose initially are further exacerbated by the failure to perform any noise analysis of the additional 42 SRU units in the El Sol hotel.

³⁵ MND, p.105, Table 4.9; Errata, p. 18, Table 6.
L5073-008j

Additionally, the City claims without support that, because the El Sol Hotel previously contained SRO dwelling units, there will be no increase in operational noise. This by the City's own admissions false since on the same exact page of the Errata the City notes the site is currently vacant.³⁶ The baseline for the Project's impacts from operation of the El Sol Hotel component of the Project is therefore zero.³⁷ The City must perform an actual operational noise analysis stemming from the increase of 42 SRU in the vicinity of the El Sol Hotel and not rely on conclusory statements that there will be no net increase in operational noise.

D. The Project May Result in Significant, Unmitigated Impacts from Transportation

We previously provided substantial evidence showing the MND's failures regarding the VMT analysis by impermissible parking reduction from a claimed 192 spots to 0 which artificially lowered the employee VMT from 9.2 to 7.4, and inadequacy of the proposed mitigation measures. These impacts remain significant and unmitigated impacts.

Additionally, the Revised MND erroneously concludes no VMT analysis is required for the El Sol Hotel because it would result in less than 250 vehicle trips. There is no evidentiary support for this statement, which is demonstrably false given that the El Sol Hotel will increase VMT over the Project's previously analyzed VMT. An increase in transportation impacts requires CEQA review ..

Lastly, the Revised MND's assertion that a VMT analysis is not needed is factually wrong because, by the City's own admission, the El Sol Hotel VMT alone (294 Daily VMT/40 Daily Vehicle Trips = 7.35 VMT per capita) would exceed the Daily Household VMT per Capita threshold of 6 VMT for the Central Area.³⁸ As such, the VMT merely from the El Sol Hotel would be significant in its own right, not including the already significant impacts from the Rendon Hotel. The Revised MND, like the original MND, fails to disclose or mitigate this significant transportation impact. The City must remedy this by requiring the Project to be evaluated in an EIR.

³⁶ Errata, p. 21.

³⁷ *Hollywoodians Encouraging Rental Opportunities (HERO) v. City of Los Angeles et al.* (2019) 37 Cal.App.5th 768 (baseline for CEQA review of vacant building is that of unoccupied building which was no longer part of rental market, rather than building's prior status as occupied apartment building).

³⁸ Errata Appendix C; MND, p. 175.
L5073-008j

March 31, 2022

Page 17

E. The Project May Result in Significant, Unmitigated Cumulative Impacts

As noted above, the City failed to properly analyze the Project's construction and operational air quality impacts. Thus, the MND's cumulative impact analysis suffers from the same flaws. This failure makes the MND and the Errata deficient. An EIR should be prepared to analyze these impacts.

IV. CONCLUSION

As a result of the errors described herein and in our attached MND Comments, the Zoning Administrator's adoption of the Revised MND, and approval of a Zoning Variance for the Project, resulted in violations of CEQA and other land use laws, and must be overturned. We urge the Planning Commission to grant our appeal and order the preparation of an EIR for the Project. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Darien Key", written in a cursive style.

Darien Key

DKK:lj1

EXHIBIT 1

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

TEL: (650) 589-1660
FAX: (650) 589-5062
dkey@adamsbroadwell.com

SACRAMENTO OFFICE

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

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

DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
WILLIAM C. MUMBY

MARC D. JOSEPH
Of Counsel

March 3, 2021

*Not admitted in California.
Licensed in Colorado.

VIA EMAIL AND OVERNIGHT MAIL

Oliver Netburn, City Planner
Department of City Planning
City of Los Angeles
200 North Main Street, Room 763
Los Angeles CA 90012
Email: oliver.netburn@lacity.org

Re: Comments on the Initial Study / Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR

Dear Mr. Netburn:

We write on behalf of the Coalition for Responsible Equitable Economic Development ("CREED LA") to provide comments on the Initial Study and Mitigated Negative Declaration ("MND") prepared by the City of Los Angeles ("City") for the Rendon Hotel Project ENV-2017-4735-MND CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR ("Project"), The Rendon, LLC (the "Applicant") proposes a one-story addition to an existing three-story hotel and the construction, use, and maintenance of an attached 15-story hotel building with 103 guest rooms and approximately 15,907 square feet of commercial space comprised of an art gallery, café, restaurant, and bar uses.¹

The Project site is comprised of two contiguous parcels in the City of Los Angeles, on the northwest corner of East 7th Street and Santa Fe Avenue. The existing three-story, 14,910 square-foot hotel building on the Project Site would remain and would undergo structural alterations, tenant improvements, and a one-story addition, resulting in a four-story building. In total, the Proposed Project

¹ MND p.8.
5078-001acp

would include 67,615 square feet of floor area, resulting in a floor area ratio of 6:1. The 15-story hotel addition would reach a maximum height of 172'-5" above grade. One subterranean level would be provided to include mechanical equipment, storage, bicycle parking, and service areas. Parking would be provided off-site through a private agreement. A valet drop-off area would be located along Santa Fe Avenue, adjacent to the Project Site. Additionally, the Proposed Project would be consistent with the applicable requirements of the LAMC for bicycle parking spaces.²

Based upon our review of the MND and supporting documentation, we conclude that the MND fails to comply with the requirements of the California Environmental Quality Act³ ("CEQA"). The MND fails to accurately describe the Project. Additionally, it fails to analyze all required air quality, land use, parking, water, and noise issues. Lastly, it fails to identify the Project's potentially significant environmental impacts and fails to propose enforceable mitigation measures.

As explained in these comments, there is more than a fair argument that the Project will result in potentially significant impacts relating to air quality, public health, energy, greenhouse gas emissions, hazards, noise, and transportation. The City may not approve the Project until it prepares an environmental impact report ("EIR") that adequately analyzes the Project's potentially significant direct, indirect, and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts.

We prepared these comments with the assistance of environmental health, air quality, and greenhouse gas ("GHG") expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise ("SWAPE") and acoustics expert Neil A. Shaw, FASA, FAES. SWAPE's technical comments and curricula vitae are attached as **Attachment A**.⁴ Mr. Shaw's technical comments and curriculum vitae are attached as **Attachment B**.⁵ The attached expert comments require separate responses under CEQA.⁶ We

² *Id.*

³ Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").

⁴ **Attachment A**: Letter from M. Hagemann and P. Rosenfeld (SWAPE) re *Comments on Rendon Hotel Project (Case Number: ENV-2017-4735-MND)* (February 25, 2021) ("SWAPE Comments").

⁵ **Attachment B**: Letter from Neil A. Shaw re *2053 – 2058 East 7th Street, Los Angeles Project ENV-2017-4735-MND and Appendix F - Noise Impact Review* (March 2, 2021) ("Shaw Comments").

⁶ 14 CCR § 15088(a), (c).
5078-001acp

reserve the right to supplement these comments at later hearings and proceedings related to the Project.⁷

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 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, 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 on site.

Also, 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 businesses and industries 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.

II. AN EIR IS REQUIRED

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.⁸ "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions

⁷ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

⁸ See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.
5078-001acp

before they are made. Thus, the EIR protects not only the environment but also informed self-government.”⁹ 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.”¹⁰

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.¹¹ 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.¹²

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 record before the public agency that the project, as revised, *may* have a significant effect on the environment.¹³

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

⁹ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (*Goletta Valley*), internal citations omitted.

¹⁰ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹¹ See Pub. Resources Code, § 21100.

¹² Pub. Resources Code, §§ 21080, subd. (d), 21082.2, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15064, subds. (f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123 (*Laurel Heights II*); *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 (*Quail Botanical*).

¹³ Pub. Resources Code, § 21064.5 (emphasis added).
5078-001acp

of an EIR.”¹⁴ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.¹⁵ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.¹⁶

“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.”¹⁷ According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles outlined 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.”¹⁸ Deferring formulation of mitigation measures to post-approval studies is generally impermissible.¹⁹ Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.²⁰ If the identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further

¹⁴ See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

¹⁵ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

¹⁶ *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 (*Friends of B Street*) (“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”).

¹⁷ CEQA Guidelines, § 15384, subd. (a).

¹⁸ CEQA Guidelines, § 15126.4, subd. (a)(2).

¹⁹ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.

²⁰ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical*, *supra*, 29 Cal.App.4th at p. 1604, fn. 5.

5078-001acp

approvals must be made contingent upon meeting these performance criteria.²¹ 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.²²

Concerning 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.²³ 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.

III. THE MND FAILS TO PROVIDE AN ACCURATE AND COMPLETE PROJECT DESCRIPTION

An accurate and complete project description is necessary to evaluate the potential environmental effects of a proposed project.²⁴ Without a complete project description, the environmental analysis will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.²⁵ The courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."²⁶ Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs.²⁷

²¹ *Ibid.*

²² *Ibid.*

²³ Pub. Resources Code, § 21064.5.

²⁴ See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

²⁵ See *ibid.*

²⁶ *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

²⁷ *Id.* at pp. 192-193.

5078-001acp

A. The MND Fails to Adequately Describe the Project's Water Usage

The MND fails to include a complete and accurate description of the Project's water use. The MND fails to describe the amount of water that will be used during the Project's 18-month construction period and fails to provide supporting evidence that the amount of water required for construction (whatever that may be) is available from LADWP or other service providers.²⁸ The MND states that the "Project would generate an increase in water demand of approximately 22,244 gallons per day (gpd) of water (or approximately 25-acre feet per year), which is significantly below available capacity."²⁹ However, this calculation only includes *operational* water use (hotel rooms, restaurant, etc.) and does not include water use during the construction or any estimate regarding what amount would be needed during construction.

B. The MND Fails to Adequately Describe the Project's Offsite Parking Agreement

All discussions in the MND related to the Project's proposed off-site parking are extremely short, vague, and lacking detail regarding EV spots and applicable carpool or vanpool areas.³⁰ The Applicant has not provided any details of where this parking would be, how employee parking will be handled, and the viability of obtaining said agreement.³¹

C. The MND Fails to Adequately Describe the Project's Activities that May Result in Significant Noise Impacts

The MND's noise section fails to discuss a variety of facets that may result in significant noise impacts. The MND states that requests for permits for the sale and consumption of alcohol and for dancing on the premises are anticipated.³² However, descriptions of the accompanying activities, such as live or recorded music, are not included in the MND's discussion of potentially significant noise impacts.³³ The MND further fails to disclose whether the Project anticipates the use of sound systems on the rooftop, alcohol use on the rooftop, and where said dancing would

²⁸ MND, Pp.62-63; MND Section XIX (Utilities), pp. 183-185, and pp. 188-189

²⁹ MND Section XIX (Utilities), pp. 183-185, and pp. 188-189

³⁰ MND, pp. 133-134.

³¹ *Id.*

³² MND p. 12; See Shaw Comment letter p.1.

³³ MND p. 12 compared to MND pp. 136-152; See Shaw Comment letter p.1.

5078-001acp

occur, thus failing to describe the facts necessary to determine whether the Project will result in a potentially significant operational noise impact.³⁴

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.

IV. THE MND FAILS TO ANALYZE IMPACTS UNDER CEQA

A. The MND Fails to Analyze Hydrology and Water Quality and Utilities Impacts Due to Water Usage during the Construction of the Project.

First, the MND could have an impact on existing infrastructure and require upgrades since LADWP did not have adequate information to comment on any impact due to lack of information on fire and domestic water needs from the Applicant.³⁵ The MND does not address the Project's fire and domestic water needs, and it is unclear whether the Applicant ever obtained this information and provided it to LADWP to confirm that no upgrades would be necessary.³⁶

The MND then states that "no further upgrades are anticipated at this time" which is true that no upgrades are anticipated but that is because the analysis does not contain all the necessary information for LADWP to provide a full analysis, and therefore determine whether upgrades would be necessary. The failure to provide the necessary information to LADWP results in a flawed, and somewhat premature, conclusion that "potential impacts resulting from water infrastructure improvements would be less than significant."³⁷

Second, the Air Quality construction emissions analysis hinges on a variety of fugitive dust control measures related to wetting the soil during construction.³⁸ Yet, the MND fails to describe the amount of water necessary to comply with these measures and what these measures would do to the quality of the water used.³⁹ The Applicant must provide this basic information so the public and decision-makers

³⁴ See Shaw Comment letter p.1-4.

³⁵ MND, Appendix H p. 10, LADWP Letter regarding Water Needs Question 7.

³⁶ *Id.*

³⁷ MND, p. 185.

³⁸ MND, pp. 62-63.

³⁹ MND, p. 117.

5078-001acp

can meaningfully assess the Project's potential impacts. Further, without this information, there is no support for the Applicant's conclusion that the Project's impacts on Hydrology and Water Quality are less than significant.⁴⁰

B. The MND Fails to Adequately Analyze Noise Impacts

First, as Mr. Shaw explains, noise from boisterous patrons, fueled by alcohol and music being played at the rooftop lounge area will likely have an impact on the residences next to the Project site, and "[t]herefore, the MND's declaration of "no impact" is not supported. It is likely that the Project will result in significant, unmitigated operational noise impacts."

Second, due to the deficiencies above, it is necessary to establish an accurate existing baseline to estimate noise impacts as accurately as possible. The MND fails to provide an accurate description of existing noise conditions because it uses imprecise and inadequate methods to establish a baseline. Any analysis that follows in the MND is therefore flawed.⁴¹

For example, MND Table 4.13, Estimated Exterior Construction Noise at Nearest Sensitive Receptors Without Mitigation, presents data from 15-minute mid-day noise measurements taken at the Project site on one day. Absent from the MND or its analyses are details critical to support its conclusions regarding the existing baseline at the Project site. No description of the environmental conditions in the vicinity, such as the current or former presence of construction and other activities near the measurement locations or other environmental conditions such as wind that could affect the noise baseline measurements are disclosed. There is no statement to the effect "[a]ll equipment is under current calibration, copies of which are available on request" and so the accuracy of the measurements is open to question. Nor is the software used to process, analyze, and present the data disclosed.⁴²

Without this information, the City is unable to determine whether the increase in ambient noise levels caused by Project construction and operation would be significant, as called for by CEQA.⁴³

⁴⁰ MND, p. 117.

⁴¹ Shaw comment letter, pp. 4.

⁴² Shaw comment letter, pp. 4.

⁴³ Shaw comment letter, pp. 4.

5078-001acp

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.⁴⁴

V. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS THAT REQUIRE THE CITY TO PREPARE AN EIR

Under CEQA, a lead agency must 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.⁴⁵ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.⁴⁶ An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁴⁷ Substantial evidence can be provided by technical experts or members of the public.⁴⁸ “If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.”⁴⁹

As discussed below, there is a fair argument supported by substantial evidence that the Project may result in significant impacts relating to air quality, public health, energy, greenhouse gas emissions, hazards, noise, and

⁴⁴ MND pp. 136-152.

⁴⁵ Pub. Resources Code, § 21082.2; CEQA Guidelines, § 15064, subds. (f), (h); *Laurel Heights II*, *supra*, 6 Cal. 4th at p. 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*, *supra*, 29 Cal.App.4th at pp. 1601-1602.

⁴⁶ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁴⁷ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; *see also Friends of B Street*, *supra*, 106 Cal.App.3d at p. 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 [environmental impact report] and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

⁴⁸ *See, e.g., Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 (substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy); *see also Architectural Heritage Assn. v. County of Monterey*, 122 Cal.App.4th 1095, 1117-1118 (substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing); *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

⁴⁹ CEQA Guidelines, § 15062, subd. (f).
5078-001acp

transportation. The City is required to prepare an EIR to evaluate the Project's impacts and propose mitigation measures to reduce those impacts to a less-than-significant level.

A. There is Substantial Evidence Supporting a Fair Argument that the MND Underestimates and Fails to Properly Mitigate Air Quality Impacts

Under CEQA a project has significant impacts if it “[v]iolate[s] any air quality standard or contribute[s] substantially to an existing or projected air quality violation” or “[e]xpose[s] sensitive receptors to substantial pollutant concentrations.”⁵⁰ The South Coast Air Quality Management District (“SCAQMD”) maintains thresholds of significance for criteria air pollutants that are to be used in determining the significance of a project's air quality impacts under CEQA.⁵¹ The MND acknowledges that the proposed project would result in a significant impact if it exceeds the SCAQMD construction and operational significance thresholds,⁵² but concludes that Project emissions would not violate applicable thresholds.

SWAPE reviewed the MND's air quality analysis and concludes that the MND contains numerous errors and omissions in its emissions modeling which result in the MND substantially underestimating construction and operational emissions. SWAPE performed independent modeling of the Project's construction and operational emissions to correct these errors and concludes that the Project will result in significant health risks from emissions of toxic air contaminants (“TACs”), as well as significant GHG emissions.

1. The MND Fails to Accurately Calculate Construction and Operational Emissions.

The Air Quality construction emissions analysis is flawed due to several factors. As SWAPE explains there were: (1) unsubstantiated input parameters used to estimate project emissions;⁵³ (2) the CalEEMod model used by the Applicant failed to model all proposed land use types in the Project;⁵⁴ (3) the Applicant edited

⁵⁰ CEQA Appendix G.

⁵¹ See SCAQMD Thresholds, available at <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>.

⁵² MND, p. 61.

⁵³ SWAPE comment letter, p.3.

⁵⁴ SWAPE comment letter, pp. 3-4.

5078-001acp

the acres of grading value in the CalEEMod model resulting in an unsubstantiated reduction to acres of grading value;⁵⁵ (4) the Applicant edited the number of hauling trips in the CalEEMod model resulting in an unsubstantiated reduction to default demolition haul trip numbers;⁵⁶ (5) the Applicant edited the number of operational trips types and lengths in the CalEEMod model resulting in unsubstantiated values for operational trips;⁵⁷ and (6) the Applicant failed to properly apply operational mitigation measures resulting in unenforceable mitigation measures.⁵⁸

Additionally, the MND's air quality construction emissions analysis hinges on a variety of fugitive dust control measures related to wetting the soil during construction⁵⁹ Yet, the MND fails to describe the amount of water necessary to comply with these measures and whether such water is available.⁶⁰ Failure to have an adequate water supply to implement these dust control measures could significantly increase the Project's PM emissions during construction, which would significantly alter the MND's Air Quality analysis.

For restaurant odor control, the Applicant cites SCAQMD Rule 1138 stating it requires "the installation of odor reducing equipment."⁶¹ That is only partially correct since Rule 1138 governs "chain-driven charbroilers used to cook meat" which presumably do help contain odor somewhat. Any other form of odor-producing cooking methods are not regulated under Rule 1138 though and thus odors beyond cooked meat are not properly addressed under this section and provide an incomplete picture of whether there could be odors adversely affecting a substantial number of people.⁶² The MND fails to discuss operational odor impacts that would not be regulated by SCAQMD Rule 1138.

Finally, the haul trip distance calculation issues further discussed under V.C presumably underestimate the distance of haul trips by half and would thus be incorrect and would need to be recalculated and then judged against the SCAMD thresholds.

⁵⁵ SWAPE comment letter, p.4.

⁵⁶ SWAPE comment letter, p.5.

⁵⁷ SWAPE comment letter, pp. 6-7.

⁵⁸ SWAPE comment letter, pp. 7-8.

⁵⁹ MND, pp. 62-63.

⁶⁰ *Id.*

⁶¹ MND, p. 70.

⁶² MND, p. 70.

5078-001acp

As a result of the errors in the MND's emissions analysis, the MND's conclusions regarding the severity of the Project's air quality impacts are unsupported.

B. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant, Unmitigated Health Risk from Toxic Air Contaminants

SWAPE performed a Health Risk Screening Analysis, which looked at air emissions and their correlation to risks of increased cancer.⁶³ SWAPE's analysis relied on "OEHHA guidance and recommended guidance put out by the SCAQMD, BAAQMD, and SJVAPCD" to account for the carcinogenic toxicity of air pollution.⁶⁴ SWAPE determined that the construction and operation of the Project could result in a potentially significant health risk impact when correct exposure assumptions and up-to-date applicable guidance are used.⁶⁵ Specifically, SWAPE found that the excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy throughout Project construction and operation, utilizing age sensitivity factors, are approximately 13, 120, 360, and 21 in one million, respectively, and that the excess cancer risk throughout a residential lifetime (30 years), utilizing age sensitivity factors, is approximately 520 in one million.⁶⁶ All of these cancer risks exceed the SCAQMD threshold of 10 in one million, resulting in a potentially significant impact that the MND fails to disclose or mitigate.

SWAPE's comments provide substantial evidence supporting a fair argument that the Project will result in potentially significant health risks that the MND underestimates and fails to properly mitigate.

C. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant, Unmitigated GHG Emissions

CEQA requires the lead agency to use scientific data to evaluate GHG impacts directly and indirectly associated with a project.⁶⁷ The analysis must

⁶³ SWAPE comment letter, pp.12-16.

⁶⁴ SWAPE comment letter, p.14.

⁶⁵ SWAPE comment letter, p.16 vs. MND, p. 69.

⁶⁶ SWAPE comment letter, p.15.

⁶⁷ See 14 C.C.R. § 15064.4(a) (lead agencies "shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project); 14 C.C.R. § 15064(d) (evaluating significance of the environmental effect of a project requires consideration of reasonably foreseeable indirect physical

5078-001acp

“reasonably reflect evolving scientific knowledge and state regulatory schemes.”⁶⁸ In determining the significance of GHG emissions impacts, the agency must consider the extent to which the project may increase GHG emissions compared to the existing environmental setting and the “extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions.”⁶⁹

Under Section 15064.4, an agency can either measure GHG emissions (1) numerically (by comparing tons/metric tons of GHG emissions to a numeric – e.g. “Quantitative” - GHG significance threshold), or (2) by determining whether the project is consistent with applicable climate change plans / GHG reduction plans (“Qualitative” threshold).⁷⁰

The City either did not understand this distinction or deliberately tried to obfuscate their findings by combining the two approaches.⁷¹ The MND’s GHG analysis starts by calculating a GHG amount for the project indicating that the MND would utilize a quantitative approach. After this initial analysis, the MND then goes on to claim that because none of the applicable climate change plans / GHG reduction plans contains a project-specific quantitative GHG significance threshold (which they do), the City’s quantitative GHG number is thus not in violation of any of the climate change plans.

changes caused by the project); 14 C.C.R. § 15358(a)(2) (defining “effects” or “impacts” to include indirect or secondary effects caused by the project and are “later in time or farther removed in distance, but are still reasonably foreseeable” including “effects on air”); CEQA Guidelines, Appendix G, § VIII: Greenhouse Gas Emissions (stating agencies should consider whether the project would “generate greenhouse gas emissions, **either directly or indirectly**, that may have a significant impact on the environment.”) (emphasis added).

⁶⁸ 14 C.C.R. § 15064.4(b); see also *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504 (holding that lead agencies have an obligation to track shifting regulations and to prepare EIRs in a fashion that keeps “in step with evolving scientific knowledge and state regulatory schemes”).

⁶⁹ 14 C.C.R. § 15064.4(b)(1), (3).

⁷⁰ 14 C.C.R. § 15064.4.

⁷¹ MND, pp.104-109.

5078-001acp

1. Failure to Adequately Evaluate Greenhouse Gas Impacts

The MND estimates that the Project would generate net annual GHG emissions of 898.90 metric tons of carbon dioxide equivalents per year (“MT CO₂e/year”), after the inclusion of GHG reduction measures (see excerpt below).⁷²

Table 4.9
Proposed Project Operational Greenhouse Gas Emissions

Emissions Source	Estimated Project Generated CO ₂ e Emissions (Metric Tons per Year)		
	Base Project Without GHG Reduction Features	Proposed Project	Percent Reduction ^a
Area	<0.01	<0.01	0%
Energy	373.08	373.08	0%
Mobile (Motor Vehicles)	591.04 ^{b,c}	473.98	20%
Stationary	4.59	4.59	0%
Waste	28.36	14.18	50%
Water	24.34	19.47	20%
Construction Emissions ^d	13.60	13.60	--
Total GHG Emissions:	1,035.01	898.90	13%
Notes: ^a The Percent Reduction is not a quantitative threshold of significance, but shows the efficacy of the Project's compliance with the various regulations, plans and policies that have been adopted with the intent of reducing GHG emissions. ^b Based on Proposed Project mobile source GHG emissions excluding Mitigation Measures and reduced VMT. ^c Calculated proportionately based on Proposed Project mobile trips with reductions 494 trips to trips without reductions 616 trips and multiplied with the GHG emissions of 473.98 MTCO ₂ e. ^d The total construction GHG emissions were amortized over 30 years and added to the operation of the Project. Calculation data and results provided in Appendix E, Greenhouse Gas Emissions Worksheets.			

However, the MND does not compare the Project's net annual GHG emissions estimates to a quantitative GHG threshold, stating:

“In the absence of any adopted numeric threshold, the significance of the Project's GHG emissions is evaluated consistent with CEQA Guidelines Section 15064.4(b)(2) by considering whether the Project complies with applicable plans, policies, regulations, and requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. For this Project, as a land use development project, the most directly applicable adopted regulatory plan to reduce GHG emissions is the

⁷² MND, p.104; SWAPE Comment letter, p. 16.
5078-001acp

2020 RTP/SCS, which is designed to achieve regional GHG reductions from the land use and transportation sectors as required by SB 375 and the State's long-term climate goals. This analysis also considers consistency with regulations or requirements set forth by the 2008 Scoping Plan and subsequent updates SB 375, SCAG's 2020 RTP/SCS, and the L.A. Green Building Code."⁷³

As demonstrated in the excerpt above, the Project relies upon the Project's consistency with CARB's 2017 *Scoping Plan*, SB 375, SCAG's 2020 *RTP/SCS*, and the L.A. Green Building Code to conclude that the Project would result in a less-than-significant GHG impact. However, the MND'S GHG analysis, as well as the subsequent less-than-significant impact conclusion, is unsupported for four reasons.⁷⁴

a) The MND's quantitative GHG analysis relies upon an incorrect and unsubstantiated air model.

As previously stated, the MND estimates that the Project would generate net annual GHG emissions of 898.90 MT CO₂e/year, after the inclusion of GHG reduction measures.⁷⁵ However, the MND's quantitative GHG analysis is unsubstantiated. When SWAPE reviewed the Project's CalEEMod output files, provided in the Greenhouse Gas Emissions Worksheets as Appendix E to the MND, they found that several of the values inputted into the model are not consistent with information disclosed in the IS/MND. As a result, SWAPE concludes that the MND's emissions modeling underestimates the Project's emissions, and the MND's quantitative GHG analysis should not be relied upon to determine Project significance.

An EIR should be prepared that adequately assesses the potential GHG impacts that the construction and operation of the proposed Project may have on the surrounding environment.⁷⁶

⁷³ MND, p.103; SWAPE Comment letter, p. 17.

⁷⁴ SWAPE Comment letter, p. 17.

⁷⁵ MND, p.104.

⁷⁶ SWAPE comment letter, p.17.

b) The MND's unsubstantiated air model indicates a potentially significant impact.

The MND's incorrect and unsubstantiated air model indicates a potentially significant GHG impact, when applying the widely-used 2030 "Substantial Progress" threshold of 660 MT CO₂e/year⁷⁷ and AEP "2030 Land Use Efficiency Threshold" of 2.6 metric tons of carbon dioxide equivalents per service population per year ("MT CO₂e/SP/year").⁷⁸ In support of thresholds for the 2030 target, AEP guidance states:

"Once the state has a full plan for 2030 (which is expected in 2017), and then a project with a horizon between 2021 and 2030 should be evaluated based on a threshold using the 2030 target. A more conservative approach would be to apply a 2030 threshold based on SB 32 for any project with a horizon between 2021 and 2030 regardless of the status of the Scoping Plan Update" (emphasis added).⁷⁹

As the California Air Resources Board ("CARB") adopted California's 2017 Climate Change Scoping Plan in November of 2017, the proposed Project "should be evaluated based on a threshold using the 2030 target," according to the relevant guidance referenced above. Thus, to evaluate the Project's GHG emissions quantitatively, SWAPE compared the Project's GHG emissions, as estimated by the IS/MND, to the widely-used 2030 "Substantial Progress" threshold of 660 MT

⁷⁷ See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6; SWAPE Comment letter, p. 18.

⁷⁸ "Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California." Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40.

⁷⁹ "Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California." Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40.

CO₂e/SP/year⁸⁰ and AEP “2030 Land Use Efficiency Threshold” of 2.6 MT CO₂e/SP/year.⁸¹

The MND estimates that the Project would generate net annual GHG emissions of 898.90 MT CO₂e/year. Furthermore, according to CAPCOA’s CEQA & Climate Change report, service population is defined as “the sum of the number of residents and the number of jobs supported by the project.”⁸² The MND estimates that the Project would employ approximately 216 people upon buildout.⁸³ As the Project does not propose any residential land uses, SWAPE estimates a service population of 216 people.⁸⁴ Dividing the Project’s GHG emissions, as estimated by the IS/MND, by a service population value of 216 people, SWAPE finds that the Project would emit approximately 4.2 MT CO₂e/SP/year (see table below).⁸⁵

IS/MND Modeling Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Net Annual GHG Emissions	899
Threshold	660
Exceed?	Yes
Service Population	216

⁸⁰ See: “JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT.” City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vrbRH0, p. 7; “TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT.” City of Fremont, February 2020, available at: “SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT.” City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

⁸¹ SWAPE comments, p. 18, citing “Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California.” Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40; SWAPE Comment letter, p. 16.

⁸² CAPCOA (Jan. 2008) CEQA & Climate Change, p. 71-72, <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf>.

⁸³ MND, p.127.

⁸⁴ Calculated: 216 employees + 0 residents = 216 service population.

⁸⁵ Calculated: (898.90 MT CO₂e/year) / (216 service population) = (4.2 MT CO₂e/SP/year); SWAPE Comment letter, p. 18.

Service Population Efficiency	4.2
Threshold	2.6
<i>Exceed?</i>	<i>Yes</i>

As demonstrated above, the Project's estimated net annual GHG emissions and service population efficiency value exceed the 2030 "Substantial Progress" threshold of 660 MT CO₂e/SP/year and AEP's "2030 Land Use Efficiency Threshold" of 2.6 MT CO₂e/SP/year, respectively. As a result, SWAPE concludes that the MND's less-than-significant GHG impact conclusion should not be relied upon. An EIR should be prepared for the Project and mitigation measures should be implemented to reduce the Project's GHG emissions to less-than-significant levels.⁸⁶

c) The MND fails to consider the performance-based standards under CARB's *Scoping Plan*.

The Project relies upon the Project's consistency with CARB's 2017 *Scoping Plan* to conclude that the Project would result in a less-than-significant GHG impact (p. 103). However, SWAPE's review of the Project documents demonstrates that the MND fails to consider the performance-based standards under the CARB's 2017 *Scoping Plan*.⁸⁷

(1) Passenger & Light Duty VMT Per Capita Benchmarks per SB 375

In reaching the State's long-term GHG emission reduction goals, CARB's 2017 *Scoping Plan* explicitly cites to SB 375 and the VMT reductions anticipated under the implementation of Sustainable Community Strategies.⁸⁸ CARB has identified the population and daily VMT from passenger autos and light-duty vehicles at the state and county level for each year between 2010 to 2050 under a "baseline scenario" that includes "current projections of VMT included in the existing Regional Transportation Plans/Sustainable Communities Strategies (RTP/SCSs) adopted by the State's 18 Metropolitan Planning Organizations (MPOs)

⁸⁶ SWAPE Comment letter, p. 19.

⁸⁷ SWAPE Comment letter, p. 19.

⁸⁸ "California's 2017 Climate Change Scoping Plan." CARB, November 2017, *available at*: https://ww3.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf, p. 25, 98, 101-103.

5078-001acp

pursuant to SB 375 as of 2015.”⁸⁹ By dividing the projected daily VMT by the population, SWAPE calculated the daily VMT per capita for each year at the state and county level for 2010 (baseline year), 2024 (Project operational year), and 2030 (target years under SB 32) (see table below and Attachment B).⁹⁰

2017 Scoping Plan Daily VMT Per Capita						
	Los Angeles County			State		
Year	Population	LDV VMT Baseline	VMT Per Capita	Population	LDV VMT Baseline	VMT Per Capita
2010	9,838,771	216,979,221.64	22.05	37,335,085	836,463,980.50	22.40
2024	10,627,846	219,237,756.72	20.63	41,994,283	926,776,780.89	22.07
2030	10,868,614	215,539,586.12	19.83	43,939,250	957,178,153.20	21.78

As explained in SWAPE’s comments, the below table compares the 2017 *Scoping Plan* daily VMT per capita values against the daily VMT per capita values for the Project based on SWAPE’s updated modeling (see table below and Attachment B).

Daily VMT Per Capita from Passenger & Light-Duty Trucks, Exceedances under 2017 Scoping Plan Performance-Based SB 375 Benchmarks	
Sources	SWAPE Modeling
Annual VMT from Auto & Light-Duty Vehicles	2,360,016
Daily VMT from Auto & Light-Duty Vehicles	6,466
Service Population	216
Daily VMT Per Capita	29.93
2017 Scoping Plan Benchmarks, Statewide	
22.40 VMT (2010 Baseline) Exceed?	Yes
22.07 VMT (2024 Projected) Exceed?	Yes
21.78 VMT (2030 Projected) Exceed?	Yes

⁸⁹ “Supporting Calculations for 2017 Scoping Plan-Identified VMT Reductions,” Excel Sheet “Readme.” CARB, January 2019, available at: https://ww2.arb.ca.gov/sites/default/files/2019-01/sp_mss_vmt_calculations_jan19_0.xlsx.

⁹⁰ SWAPE Comment letter, pp. 19-20.
5078-001acp

2017 Scoping Plan Benchmarks, Los Angeles County Specific	
22.05 VMT (2010 Baseline) Exceed?	Yes
20.63 VMT (2024 Projected) Exceed?	Yes
19.83 VMT (2030 Projected) Exceed?	Yes

As shown above, SWAPE’s updated modeling estimates that the Project exceeds the CARB 2017 *Scoping Plan* projections for 2010, 2024, and 2030. Because the exceeds the CARB 2017 *Scoping Plan* performance-based daily VMT per capita projections, the Project conflicts with the CARB 2017 *Scoping Plan*. As such, a Project-specific EIR should be prepared for the proposed Project to provide additional information and analysis demonstrating that the Project would result in a less-than-significant GHG impact.⁹¹

d) The MND fails to consider the performance-based standards under SCAG’s *RTP/SCS*.

The Project relies upon the Project’s consistency with SCAG’s 2020-2045 *RTP/SCS* in order to conclude that the Project would result in a less-than-significant GHG impact. However, SWAPE’s review of the Project documents demonstrates that the MND fails to consider the performance-based standards under SCAG’s 2020-2045 *RTP/SCS*, such as: (i) per capita GHG emission targets, or (ii) daily vehicle miles traveled (“VMT”) per capita benchmarks.⁹²

(1) SB 375 Per Capita GHG Emission Goals

SB 375 was signed into law in September 2008 to enhance the state’s ability to reach AB 32 goals by directing CARB to develop regional 2020 and 2035 GHG emission reduction targets for passenger vehicles (autos and light-duty trucks). In March 2018, CARB adopted updated regional targets requiring a 19 percent decrease in VMT for the SCAG region by 2035. This goal is reflected in SCAG’s 2020 *RTP/SCS* Program Environmental Impact Report (“PEIR”),⁹³ in which the 2020

⁹¹ SWAPE Comment letter, p. 20.

⁹² SWAPE Comment letter, p. 20.

⁹³ “Connect SoCal Certified Final Program Environmental Impact Report.” SCAG, May 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocial_complete.pdf?1607981618.

5078-001acp

RTP/SCS PEIR updates the per capita emissions to 21.3 lbs/day in 2020 and 18.8 lbs/day in 2035 (see excerpt below).⁹⁴

Table 3.8-10
SB 375 Analysis

	2005 (Baseline)	2020 (Plan)	2035 (Plan)
Resident population (per 1,000)	17,161	19,194	21,110
CO2 emissions (per 1,000 tons)	204.0 ^{/a/}	204.5 ^{b/}	198.6 ^{b/}
Per capita emissions (pounds/day)	23.8	21.3	18.8
% difference from Plan (2020) to Baseline (2005)			-8%
% difference from Plan (2035) to Baseline (2005)			-19% ^{/c/}

Note:

/a/ Based on EMFAC2007

/b/ Based on EMFAC2014 and SCAG modeling, 2019.

/c/ Includes off-model adjustments for 2035 and 2045

Source: SCAG modeling, 2019.

<http://www.scag.ca.gov/committees/CommitteeDocLibrary/jointRCPC110515fullagn.pdf>

In order to evaluate consistency with this SB 375 objective and SCAG's RTP/SCS performance-based goals, SWAPE calculated the Project's per-capita CO₂ emissions from passenger and light duty vehicles (see Attachment B). First, total annual GHG mobile emissions were multiplied by the percentage of auto and light-duty truck fleet mix, then converted into total pounds per day, then divided by the estimated service population of 216. The below table shows the per capita emissions for the Project based on SWAPE's updated modeling (see table below and Attachment B).⁹⁵

CO₂e Per Capita Emissions from Passenger & Light-Duty Trucks,	
Exceedances under RTP/SCS Performance-Based SB 375 Goals	
Sources	Project

⁹⁴ "Connect SoCal Certified Final Program Environmental Impact Report." SCAG, May 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocal_complete.pdf?1607981618, p. 3.8-74; SWAPE Comment letter, p. 21.

⁹⁵ SWAPE Comment letter, p. 21.

	SWAPE Modeling
Annual Mobile Emissions (MT CO ₂ e/year)	1,020.28
Passenger & Light-Duty Fleet Mix (%)	91.22%
Daily CO ₂ e Emissions (lbs/day)	5,621.31
Service Population	216
Per Capita Emissions (lbs/day)	26.02
21.3 lbs/day/SP (2020 Goal) Exceeded?	Yes
18.8 lbs/day/SP (2035 Goal) Exceeded?	Yes

As shown in the above table, when utilizing SWAPE's updated modeling, the Project would result in 26.02 pounds per day per service population ("lbs/day/SP"). This exceeds both SCAG's 2020 and 2035 targets of 21.3- and 18.8-lbs/day/SP, respectively, indicating that the Project is inconsistent with SCAG's *RTP/SCS*.⁹⁶

(2) SB 375 RTP/SCS Daily VMT Per Capita Target

Under the SCAG's 2020 *RTP/SCS*, daily VMT per capita in the SCAG region should decrease from 23.2 VMT in 2016 to 20.7 VMT by 2045.⁹⁷ Daily VMT per capita in San Bernardino County should decrease from 22.2 to 19.2 VMT during that same period.⁹⁸

Here, however, the MND fails to consider any of the abovementioned performance-based VMT targets. In order to evaluate consistency with the *RTP/SCS*'s performance-based VMT reduction targets, SWAPE calculated the Project's VMT from passenger and light duty vehicles (calculations attached hereto as Attachment B). First, annual VMTs from passenger automobile and light-duty vehicle were calculated based on the CalEEMod default fleet mix, converted into daily VMT, and divided by the estimated service population of 216. The below table

⁹⁶ SWAPE Comment letter, p. 22.

⁹⁷ "Connect SoCal." SCAG, September 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal-plan_0.pdf?1606001176, pp. 138.

⁹⁸ "Connect SoCal." SCAG, September 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal-plan_0.pdf?1606001176, pp. 138; SWAPE Comment letter, p. 22. 5078-001acp

shows the daily VMT per capita for the Project based on SWAPE's updated modeling (see table below and Attachment B). ⁹⁹

Daily VMT Per Capita from Passenger & Light-Duty Trucks, Exceedances under RTP/SCS Performance-Based SB 375 Target	
Sources	Project
	SWAPE Modeling
Annual VMT from Auto & Light-Duty Vehicles	2,360,016
Daily VMT from Auto & Light-Duty Vehicles	6,466
Service Population	216
Daily VMT Per Capita	29.93
2020 RTP/SCS Benchmarks, SCAG-Wide	
23.2 VMT (2016 Baseline) Exceed?	Yes
20.7 VMT (2045 Target) Exceed?	Yes
2020 RTP/SCS Benchmarks, Los Angeles County	
22.2 VMT (2016 Baseline) Exceed?	Yes
19.2 VMT (2045 Target) Exceed?	Yes

As shown in the above table, based on a service population of 216, the Project would result in 29.93 daily VMT per capita from passenger auto and light-duty truck vehicles. This exceeds all SCAG and Los Angeles County specific benchmarks and targets under SCAG's 2020-2045 *RTP/SCS*. Thus, based on SWAPE's updated modeling, the Project would exceed the 2016 baseline and 2045 target VMT per

⁹⁹ SWAPE Comment letter, p. 23.
5078-001acp

capita values for both Los Angeles County and the SCAG region as a whole, indicating that the Project conflicts with the SCAG's *RTP/SCS* and SB 375.¹⁰⁰

Because the MND fails to provide either a quantitative or qualitative analysis of these issues, the MND lacks substantial evidence to support its conclusion that the Project's GHG impacts would be less than significant. SWAPE's analysis provides substantial evidence supporting a fair argument that the Project may result in significant GHG emissions which the MND underestimates and fails to properly mitigate.

2. The MND Fails to Adopt All Feasible Mitigation Measures to Reduce Significant GHG Impacts

SWAPE provides an abundance of feasible mitigation measures the Project could use to reduce the impacts of its GHG emissions, which the MND fails to consider. For example, SWAPE provides a list of proposals from CAPCOA's Quantifying Greenhouse Gas Measures Report.¹⁰¹ Mitigation measures proposed by SWAPE include, among other things, programable thermostats, limits on outdoor lighting, alternative energy generation, grouped parking requiring residential permits, carpooling programs, school bus programs, local shuttles, water recycling, water-efficient landscapes, alternative fuels for construction equipment, carbon sequestration, and local and sustainable building materials.¹⁰²

In light of this readily available information, the burden is on the City to explain specifically whether it believes the proposed mitigation is not feasible, and if not, why not.¹⁰³ All feasible mitigation should be adopted in a revised MND.

D. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts from Energy Use

CEQA requires agencies to analyze a project's energy impacts when "the project's energy use reveals that the project may result in significant environmental effects due to the wasteful, inefficient, or unnecessary use of energy...."¹⁰⁴ The

¹⁰⁰ SWAPE Comment letter, p. 23.

¹⁰¹ SWAPE Comments, pp. 43-51.

¹⁰² SWAPE comment letter, pp. 23-30.

¹⁰³ See *Covington*, 43 Cal.App.5th at 879-883 (holding that revised EIR was required where respondent failed to explain why the petitioners' proposed mitigation measure was not feasible).

¹⁰⁴ 14 C.C.R. § 15126.2(b).

5078-001acp

CEQA Guidelines also state that the analysis of a project's energy impacts "should include the project's energy use for all project phases and components," and that relevant considerations include "the project's size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project."¹⁰⁵ Further guidance for considering energy impacts is included in Appendix F of the Guidelines, which states that the energy analysis may include the project's energy requirements "for each stage of the project including construction, operation, maintenance and/or removal," "[t]he effects of the project on local and regional energy supplies and on requirements for additional capacity," and "[t]he effects of the project on peak and base period demands for electricity and other forms of energy."¹⁰⁶

First, during the construction phase the energy usage is calculated incorrectly since Appendix C: (a) fails to differentiate which site the hauling calculation is determined from; and (b) fails to account for two-way trips to the Sunshine Canyon landfill thus resulting in incorrect gasoline and diesel consumption calculations.¹⁰⁷

The Construction Worker, Vendor, and Hauling Gasoline and Diesel Consumption table in Appendix C has a column titled trip length. During the demolition and grading phase, this column has the trip length listed as 30 miles.¹⁰⁸ It is unclear how this number was determined since trips to the Waste Management Downtown Diversion recycling facility are 1.4 miles round trip and trips to the Sunshine landfill are 60 miles round trip.

If some average was performed between the two centers it is not clear in Appendix C or the MND. Appendix C, and the MND, should reflect the number of trips to the Waste Management site round trip in miles then add it to the number of trips to the Landfill in miles, and then divide that number by the total number of round trips for the correct haul length. On the other hand, if the number indicates the Sunshine Canyon landfill haul trips only the calculation is incorrect because it only calculates half the trip because it is 30 miles to the landfill and another 30 back to the site. Thus the Applicant has either failed to correctly perform the

¹⁰⁵ *Id.*

¹⁰⁶ CEQA Guidelines, Appendix F: Energy Conservation, §§ C(1)–C(3).

¹⁰⁷ See MND, p.44-45 compared to MND, p. 82 Table 4.4 and MND, Appendix C p.5.

¹⁰⁸ See MND, p.44-45 compared to MND, p. 82 Table 4.4 and MND, Appendix C p.5.
5078-001acp

calculations or deprived the public and decision-makers of the math behind these calculations.

Second, the operational energy uses calculations fail to account for all the commercial space energy uses. Tables 4.5 and 4.6 in the Energy Use section assume 103 hotel rooms during operation and these rooms will consume 512,522kWh/year and 1,588,982cf/month. These two tables, along with the entire Energy Use section, fail to account for all types of operational energy use because they only account for energy consumed by the hotel rooms and not the “approximately 15,907 square feet of commercial space comprised of an art gallery, café, restaurant, and bar.”¹⁰⁹ This is a legal deficiency according to CEQA Appendix F because the MND because fails to provide substantial evidence of all the Project’s operational energy uses.¹¹⁰ Thus, the MND’s conclusion that the energy use has a “less than significant impact” is premature since it fails to analyze all operational energy uses.¹¹¹ The City cannot rely on conclusory statements in the MND to support its significance determinations regarding energy impacts.

E. The MND Lacks Substantial Evidence to Support its Conclusion that the Project Will Not Result in Significant, Unmitigated Impacts from Hazards on the Project Site

A lead agency’s significance determination must be supported by accurate scientific and factual data.¹¹² An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.¹¹³ These standards apply to an EIR’s analysis of the public health impacts of a Project.

The disturbance of toxic soil contamination at a project site is a potentially significant impact requiring CEQA review and mitigation.¹¹⁴ Indeed, this is the

¹⁰⁹ MND, p. 8.

¹¹⁰ CEQA Guidelines, Appendix F: Energy Conservation, §§ C(1)–C(3).

¹¹¹ MND, p.88.

¹¹² 14 C.C.R. § 15064(b).

¹¹³ *Kings County Farm Bureau*, 221 Cal.App.3d at 732.

¹¹⁴ *Cal. Build. Indust. Ass’n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90; ; *Citizens For Responsible Equitable Envt’l Dev. v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 331-2 (“*CREED v. Chula Vista*”).

5078-001acp

only way to explain a long line of cases requiring analysis and clean-up of hazardous waste the site of a proposed project as part of the CEQA analysis.¹¹⁵

The failure to provide the information required by CEQA makes a meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.¹¹⁶ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in a CEQA document or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.¹¹⁷

In this case, the MND concludes that the Project would have less than significant hazardous materials impacts based on an unsupported conclusion stating no hazards are present at the Project site. However, as Mr. Hagemann explains, the MND's conclusion is entirely unsupported because the MND failed to conduct a soil or groundwater study to determine whether hazards are present, including failing to prepare even a Phase I Environmental Site Assessment ("ESA") for the Project site.¹¹⁸ Instead, the MND found a less than significant impact based solely on a regulatory database search of the California Department of Toxic Substances Control Envirostor website.¹¹⁹ This approach fails to comply with CEQA, and as Mr. Hagemann explains, fails to meet basic standards of care associated with hazards assessment for construction projects.

The EPA banned asbestos-containing materials in 1989, and lead-based paints were banned for use in 1978. The existing building on the Project Site was constructed in 1914. Therefore, some building material such as dry wall, stucco, as well as the sheet roofing and mastic are suspected to contain asbestos may have been used in the building.¹²⁰ This could be confirmed through the use of a Phase I ESA.

¹¹⁵ *Association For A Cleaner Environment v. Yosemite Comm. College Dist.* (2004) 116 Cal.App.4th 629 ("ACE v. Yosemite"), *McQueen v. Bd. of Directors* (1988) 202 Cal.App.3d 1136; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1599 CEQA Guidelines, Appendix G.

¹¹⁶ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

¹¹⁷ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

¹¹⁸ SWAPE comment letter, p.2.

¹¹⁹ <https://www.envirostor.dtsc.ca.gov/public/>; MND, p. 111.

¹²⁰ MND, p. 112.

5078-001acp

A Phase I ESA is often included in CEQA documentation to identify hazardous materials issues that may pose a risk to the public, workers, or the environment, and which may require further investigation through the conduct of a Phase II ESA. Components of a Phase I include:

- a review of all known sites in the vicinity of the subject property that are on regulatory agency databases undergoing assessment or cleanup activities;
 - an inspection;
 - interviews with people knowledgeable about the property; and
 - recommendations for further actions to address potential hazards.
- Standards for performing a Phase I ESA have been established by the US EPA and the American Society for Testing and Materials Standards (ASTM).¹²¹

Phase I ESAs conclude with the identification of any “recognized environmental conditions” (“RECs”) and recommendations to address such conditions. A REC is the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or the ground, groundwater, or surface water of the property. If RECs are identified, then a Phase II ESA generally follows, which includes the collection of soil, soil vapor, and groundwater samples, as necessary, to identify the extent of contamination and the need for cleanup to reduce exposure potential to the public.¹²²

Mr. Hagemann explains that a search of the Envirostor website, as performed for the MND, is insufficient for determining Project impacts. Due diligence practices commonly used in CEQA proceedings include the preparation of a Phase I ESA, completed by a licensed environmental professional. The preparation of an EIR, to include a Phase I ESA, is necessary to identify recognized environmental conditions, if any, at the proposed Project site. Mr. Hagemann concludes that the MND should have performed a Phase I ESA in order to determine for the Project of whether hazards exists, since the Envirostar website

¹²¹ <http://www.astm.org/Standards/E1527.htm>; SWAPE comment letter, p.2

¹²² SWAPE comment letter, p.2
5078-001acp

only relies on reported hazards, and not necessarily hazards specific to this Project site.¹²³

Mr. Hagemann further explains that, if a REC is identified, a Phase II ESA should be conducted to sample for potential contaminants in soil, soil vapor, and groundwater. Any contamination that is identified above regulatory screening levels, including California Office of Environmental Health Hazard Assessment's Soil Screening Numbers¹²⁴, should be further evaluated and cleaned up, if necessary, in coordination with the Regional Water Quality Control Board and the California Department of Toxics Substances Control.¹²⁵

As a result of the City's failure to disclose and analyze the Project's potential soil and groundwater contamination, the City lacks substantial evidence to support the MND's conclusions that the Project's hazardous materials impacts are less than significant. The City should prepare an EIR to include the Phase I and Phase II ESAs necessary to accurately evaluate the Project site's existing levels of contamination and to propose mitigation measures to fully clean the site to residential standards before Project construction can begin.

F. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts from Noise

First, the MND incorrectly determines the baseline ambient dB levels.¹²⁶ The MND's ambient dB levels may not be indicative of an actual baseline since the test was limited to 15 min at noon. One 15-minute time period cannot accurately determine the ambient noise from 7 AM to 6 PM, which are the hours of construction per proposed Mitigation Measure MM-N-1 for this project. Ambient noise varies and is due to the traffic flow and construction activities at the time of the measurement, and therefore may not be "comparable to that during which the measurement is taken of the particular noise source being measured."¹²⁷

Second, the MND proposes that the 8ft wall will result in a 10 dB reduction in noise. Common sense dictates otherwise since an 8ft wall will not protect

¹²³ SWAPE comment letter, p.2

¹²⁴ <http://oehha.ca.gov/risk/chhsltable.html>

¹²⁵ SWAPE comment letter, p.2

¹²⁶ Shaw comment letter, p.2.

¹²⁷ City of Los Angeles Municipal Code Chapter XI Noise Regulation 111.01 (a); Shaw comment letter, p.2.

5078-001acp

adjacent stories that are higher than 8ft next to the construction site. Sound is a wave and thus radiates in all directions equally. Thus, an 8ft wall will only result in dB reduction for the single adjacent story to the construction site and only when construction noise emanates from the first floor. This measure fails to account for construction on floors 2-15, but the MND acts as if this reduction level can apply to the entire project.¹²⁸

These issues provide substantial evidence supporting a fair argument that the MND underestimates and fails to properly mitigate Noise impacts on the Project Site.

G. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts on Transportation

First, bullet D.5 under the MND's Transportation section claims that the Project will meet the TDM requirements under LAMC Section 12.26.J which regulates Transportation Demand Management and Trip Reduction Measures.¹²⁹ The MND claims this even though LAMC section 12.26.J requires that certain areas be designated for employee carpool and vanpool for commercial spaces over 25,000ft and the MND fails to address how this requirement is met. The MND merely makes a conclusory statement that this LAMC section will be met without any discussion or analysis of how. The MND may be lumping this LAMC section 12.26.J requirement into its variance request for offsite parking. Even if this were the case, the MND fails to analyze whether this offsite parking agreement would be adequate to meet the LAMC requirements because there is no information regarding their variance request and whether it will include carpool areas. Given the lack of discussion regarding the offsite parking agreement throughout the MND, it seems the MND concludes that all parking-related requirements are met if the magic words "offsite agreement for parking" are included. The City cannot rely on such conclusory statements to determine whether significant impacts will exist as to Transportation.

Second, according to the Transportation Study, provided as Appendix G to the MND, the Project is expected to generate approximately 732 average daily vehicle trips.¹³⁰

¹²⁸ MND, p. 147; Shaw comment letter, p.2.

¹²⁹ LAMC section 12.26.J.

¹³⁰ MND Appendix G, p.32.

Table 6
Project Weekday Trip Generation Summary¹

Land Use	ITE Code	Intensity ²	Average Weekday	AM Peak Hour			PM Peak Hour		
				In	Out	Total	In	Out	Total
Trip Generation Rates									
Hotel	310	1 rm	8.36	50%	41%	0.47	51%	40%	0.60
Trip Generation Summary									
Description	Size	Average Weekday	AM Peak Hour			PM Peak Hour			
			In	Out	Total	In	Out	Total	
PROPOSED USE									
Lodging									
Hotel	103 rm	881	28	20	48	32	30	62	
15% Transit/Walk Adjustment ³		(129)	(4)	(3)	(7)	(5)	(4)	(9)	
Proposed Project Trips		732	24	17	41	27	26	53	

As such, SWAPE explains that the model for the proposed land uses should have included trip rates that reflect the number of average daily operational vehicle trips anticipated. However, a review of the CalEEMod output files demonstrates that the “Rendon Hotel Project” model includes only 494.40, 495.43, and 360.50 weekday, Saturday, and Sunday average vehicle trips, respectively.¹³¹

Land Use	Average Daily Trip Rate		
	Weekday	Saturday	Sunday
Hotel	494.40	495.43	360.50
Total	494.40	495.43	360.50

As SWAPE explains, the weekday, Saturday, and Sunday trip numbers are underestimated by approximately 238, 237, and 372 trips, respectively. As such, SWAPE concludes that the trip rates inputted into the proposed land-use models are underestimated and inconsistent with the information provided by the MND.

These inconsistencies undermine the MND’s conclusions, as CalEEMod uses the operational vehicle trip rates to calculate the emissions associated with the Project’s operational on-road vehicles.¹³² Thus, by including underestimated operational vehicle trip rates, SWAPE concludes that the model underestimates the

¹³¹ MND, Appendix A, pp. 21, 46

¹³² “CalEEMod User Guide.” CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 35; SWAPE comments, page 6.

Project's mobile-source operational emissions and should not be relied upon to determine Project significance.

Third, SWAPE's review of the CalEEMod output files demonstrates that the "Rendon Hotel Project" model includes several manual changes to the default operational vehicle trip types and lengths (see excerpt below) (Appendix A, pp. 5, 30).

Table Name	Column Name	Default Value	New Value
tblVehicleTrips	CC_TL	8.40	6.77
tblVehicleTrips	CC_TTP	61.60	100.00
tblVehicleTrips	CNW_TL	6.90	0.00
tblVehicleTrips	CNW_TTP	19.00	0.00
tblVehicleTrips	CW_TL	16.60	0.00
tblVehicleTrips	CW_TTP	19.40	0.00

As SWAPE explains, the MND's emissions modeling assumes that 100% of the Project's trips would be commercial to the customer ("C-C") with a trip length of 6.77 miles, without explanation, as required by the CalEEMod User's Guide.¹³³ SWAPE determines that, according to the "User Entered Comments and Non-Default Data" table, the justification provided for these changes is: "Trip rates adjusted based on LADOT VMT Calculator provided by Traffic Consultant."¹³⁴

However, SWAPE concludes that these changes remain unsupported for two reasons. First, while the justification provided by the "User Entered Comments and Non-Default Data" table addresses the revisions to the operational vehicle trip *rates*, it fails to address the revised operational vehicle trip *types* or *lengths*. Second, the MND and associated appendices fail to mention or substantiate the revised operational vehicle trip types and lengths whatsoever.¹³⁵

These unsubstantiated changes render the MND's emissions modeling unsupported. As SWAPE explains, CalEEMod uses the operational vehicle trip types and lengths to calculate the emissions associated with the Project's

¹³³ "CalEEMod User Guide." CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 2, 9.

¹³⁴ MND Appendix A, pp. 4, 29.

¹³⁵ SWAPE comments, p. 7.

operational on-road vehicles.¹³⁶ By including unsubstantiated changes to the default operational vehicle trip types and lengths, SWAPE concludes that the MND's emissions modeling may underestimate the Project's mobile-source operational emissions and should not be relied upon to determine the significance of the Project's operational vehicle emissions.

The MND lacks substantial evidence to support its conclusion that the Project will result in less than significant transportation impacts. By contrast, there is substantial evidence supporting a fair argument that the MND underestimates and fails to properly mitigate transportation impacts on the Project Site.

H. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Land Use Impacts

1. The MND Fails to Establish Consistency With Applicable Zoning Regulations

The MND fails to analyze the Project's consistency with mandatory requirements under Land Use and Zoning Requirements Zoning Information-2784. The Project has five separate applicable zoning information is attached to its site: ZI-2353, ZI-2487, ZI-2488, ZI-2358, and ZI-2129, but only references four of these five.¹³⁷ The MND fails to include a discussion of ZI-2487 City Center/Central Ind. Dev. Guidelines & Controls for Residential Hotels and how the Project meets these requirements and particularly the DFD as noted in ZI-2487. The DFD prohibits the demolition, rehabilitation, or conversion of Residential Hotel Unit(s), or the construction of any new development on the site of a destroyed or demolished Residential Hotel unless the applicant complies with the provisions of the DFD.¹³⁸

Where a local or regional policy of general applicability, such as an ordinance, or in this case a zoning information is adopted to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment.¹³⁹ Any inconsistencies between a proposed project and

¹³⁶ "CalEEMod User Guide." CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 35.

¹³⁷ MND, p. 15; See also MND, pp.125-133.

¹³⁸ Los Angeles Zoning Information, ZI-2487, available at: <http://zimas.lacity.org/documents/zoneinfo/ZI2487.pdf>.

¹³⁹ *Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903. 5078-001acp

applicable plans must be discussed in the CEQA document.¹⁴⁰ A Project's inconsistencies with local plans and policies constitute significant impacts under CEQA.¹⁴¹ Given the MND's failure to demonstrate that the Project complies with the DFD currently ZI-2487 conflicts with the Project.

2. The MND Fails to Demonstrate Compliance with Land Use Standards for Parking

The MND fails to explain how the Project's proposed Zone Variance for offsite parking will meet all the required land use and planning requirements related to parking. In particular, the MND fails to discuss how the Green Building codes requirements for EV spaces will be met by moving parking offsite. The MND Energy and Transportation sections currently fail to account for EV parking. Combined with the fact that so little is mentioned regarding the Project's proposed offsite parking agreement, the lack of information in the MND makes it impossible to tell whether EV parking would be contemplated at all by the offsite agreement.

The LAMC specifies EV spots "at newly constructed hotels and motels shall be 30% of the total number of parking spaces provided, but in no case less than one, for all types of parking facilities."¹⁴² No mention of this requirement is contained in any of the MND's discussions regarding an offsite parking agreement.¹⁴³ The City must provide this basic information so the public and decision-makers can meaningfully assess the Project's potential land use impacts. Further, without this information, there is no support for the Applicant's conclusion that the Project's impacts to Land Use and Planning are less than significant.

The MND's conclusion that the Project will result in less than significant land use and planning impacts, with no mitigation required, is not supported by substantial evidence.¹⁴⁴ And absent mandatory conditions in the offsite parking agreement to require EV parking spaces which comply with LAMC requirements, it

¹⁴⁰ (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).)

¹⁴¹ (*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 (fact that a project may be consistent with a plan, such as an air plan, does not necessarily mean that it does not have significant impacts).)

¹⁴² See LAMC 99.04.106.4.3.1. New Hotels and Motels and MND pp. 81-90.

¹⁴³ MND, p. 133.

¹⁴⁴ See MND, MND p. 134.

5078-001acp

is likely that the Project would be inconsistent with City EV parking requirements, result in significant parking and land use impacts that are not disclosed in the MND.

VI. THE MND'S ANALYSIS OF CUMULATIVE IMPACTS IS INADEQUATE

CEQA requires an evaluation of cumulative impacts, defined as “two or more individual effects which, when considered together, are considerable.”¹⁴⁵ Such impacts may “result from individually minor but collectively significant projects taking place over a period of time.”¹⁴⁶ Lead agencies must consider whether a project’s potential impacts, although individually limited, are cumulatively considerable.¹⁴⁷ “Cumulatively considerable” under CEQA means that “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”¹⁴⁸

CEQA Guidelines section 15130(b)(1) provides two options for analyzing cumulative impacts: (A) list “past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency,” or (B) summarize a “projection contained in an adopted local, regional or statewide plan, or related planning document that describes or evaluates conditions contributing to the cumulative effect.”¹⁴⁹ “When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.”¹⁵⁰

This analysis necessarily requires the identification of other projects that will be constructed and/or operating over the same time period as the subject project and the analysis of these projects together with the project being reviewed. The MND fails to analyze the impacts the Project will have when considered with the more

¹⁴⁵ 14 C.C.R. § 15355.

¹⁴⁶ 14 C.C.R. § 15355(b).

¹⁴⁷ PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

¹⁴⁸ CEQA Guidelines §15064(h)(1).

¹⁴⁹ 14 C.C.R. § 15130(b)(1).

¹⁵⁰ *Id.*; *see id.* § 15130(a) (stating that the lead agency shall describe its basis for concluding that an incremental effect is not cumulatively considerable).

5078-001acp

than 21 other projects within the vicinity that are planned, have been completed, or are under construction.¹⁵¹

A. The MND Fails to Disclose, Analyze, and Mitigate Potentially Significant Cumulative Impacts to Air Quality, GHG emissions, and Transportation

The MND incorrectly concludes that the Project's cumulative air quality impacts are insignificant because they are incrementally minor.¹⁵² A CEQA document is required to disclose a significant cumulative impact "when the project's incremental effect is cumulatively considerable."¹⁵³ The MND finds the Project's cumulative impacts from construction and operational emissions to be insignificant simply because the Project's individual emissions (i.e. its incremental effect) fall below SCAQMD localized and regional significance thresholds.¹⁵⁴ However, the MND fails to take the second step required in the cumulative impacts analysis, which is to compare the Project's individual emissions with those of other reasonably foreseeable cumulative projects to determine whether the increase in emissions caused by the Project will cause cumulatively considerable increases in the specific pollutants emitted by the Project.

The MND states:

Therefore, according to the SCAQMD, individual development projects that generate construction or operational emissions that exceed the SCAQMD recommended daily thresholds for project-specific impacts would also cause a cumulatively considerable increase in emissions for those pollutants for which the Basin is in non-attainment. Thus, as discussed in response to Checklist Question III (c) above, because the construction-related and operational daily emissions associated with Proposed Project would not exceed the SCAQMD's recommended thresholds, these emissions associated with the Proposed Project would not be cumulatively

¹⁵¹ MND, pp. 60-70.

¹⁵² MND, pp. 60-70.

¹⁵³ 14 CCR § 15130(a).

¹⁵⁴ MND, pp.70-71.

5078-001acp

considerable. Therefore, cumulative air quality impacts would be less than significant.¹⁵⁵

The MND identifies 21 others recently approved or under-construction “Related Projects” that are in the direct vicinity of the Project site.¹⁵⁶ However, the “Cumulative Impacts” discussion in the MND’s Air Quality section fails to mention any of these projects and fails to make any attempt to compare the Project’s emissions with those of the other Related Projects. The result is a complete dismissal of the Project’s cumulative air quality impacts by claiming that they are a “drop in a bucket” compared with other existing regional impacts. This approach has been rejected by the Courts and fails to comply with CEQA’s requirement that a project mitigate impacts that are “cumulatively considerable.”¹⁵⁷

In *Friends of Oroville*, the City of Oroville prepared an EIR for a retail center project. The EIR failed to analyze the project’s cumulative contribution to significant GHG impacts by concluding, without analysis, that the project’s “miniscule” GHG emissions were insignificant in light of the state’s cumulative, state-wide GHG emissions problem. The EIR had concluded that a further analysis of the project’s GHG impacts would result in “applying a meaningless, relative number to determine an insignificant impact.”¹⁵⁸ The court of appeal rejected what amounted to an outright dismissal of the City’s obligation to analyze the retail center’s cumulative GHG impacts.¹⁵⁹

Similarly, in *Kings County Farm Bureau v. City of Hanford*,¹⁶⁰ the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for PM10 and ozone, the City failed to incorporate mitigations for the project’s cumulative air quality impacts from project emissions because it concluded that the Project would contribute “less than one percent of area emissions for all criteria pollutants.”¹⁶¹ The city reasoned that, because the project’s air emissions were small in comparison to existing air quality problems, that this necessarily

¹⁵⁵ MND, pp.70-71

¹⁵⁶ MND, pp. 45-50.

¹⁵⁷ PRC § 21083(b)(2); 14 CCR § 15130; *Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 721.

¹⁵⁸ 219 Cal. App. 4th at 841-42.

¹⁵⁹ *Id.*

¹⁶⁰ (1990) 221 Cal. App. 3d 692, 721.

¹⁶¹ *Id.* at 719.

5078-001acp

rendered the project's "incremental contribution" minimal under CEQA. The court rejected this approach, finding it "contrary to the intent of CEQA."

By contrast, a lead agency must find that a project may have a significant effect on the environment and must therefore require an EIR if the project's potential environmental impacts, although individually limited, are cumulatively considerable.¹⁶² The term "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."¹⁶³ The SCAQMD CEQA Guidelines similarly explain that "[w]hile one insignificant project may not affect air quality, the cumulative effect of numerous smaller projects may." To address this problem, SCAQMD recommends that individual project air emissions "be examined within the scope of the existing setting and that the examination take into account new and planned similar and nearby projects."¹⁶⁴

The City cannot end its cumulative impacts analysis at the same point at which it ended its direct impacts analysis – i.e., when it determines whether or not the project will individually cause significant air emissions. That is not the intent of the cumulative impacts' analysis. Rather, the City must attempt to determine whether the Project's emissions, when combined with other similar emissions from other projects, may be significant. Under CEQA, if an adjacent project has significant air emissions, but the proposed project does not, the proposed project may still be considered to have significant cumulative impacts if its own emissions contribute to a cumulative exceedance of a particular pollutant.¹⁶⁵ The same is true for projects which may have individually insignificant impacts, but which, when combined, result in a significant impact.¹⁶⁶ The MND fails to undertake that analysis at all.

¹⁶² PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

¹⁶³ PRC § 21083(b)(2).

¹⁶⁴ See excerpts from SCAQMD Air Quality Handbook, p. 7-3, attached hereto as Exhibit H, available at: http://www.energy.ca.gov/sitingcases/ivanpah/documents/others/2009-08-12_Attachemt_AQ1-1_CEQA_Air_Quality_Handbook_TN-47534.PDF; SCAQMD discussion of currentness of Air Quality Handbook, at <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook>.

¹⁶⁵ PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3), 15130(a).

¹⁶⁶ *Id.*

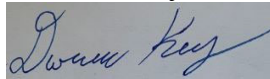
5078-001acp

VII. 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. 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 letters from SWAPE and Mr. Shaw. 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 attention to these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darien Key", is written over a light blue rectangular background.

Darien Key

DKK:acp
Attachment

ATTACHMENT A



Technical Consultation, Data Analysis and
Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G, C.Hg.
(949) 887-9013
mhagemann@swape.com

Paul E. Rosenfeld, PhD
(310) 795-2335
prosenfeld@swape.com

February 25, 2021

Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd #1000
South San Francisco, CA 94080

Subject: Comments on Rendon Hotel Project (Case Number: ENV-2017-4735-MND)

Dear Ms. Caro,

We have reviewed the February 2021 Initial Study/Mitigated Negative Declaration ("IS/MND") for the Rendon Hotel Project ("Project") located in the City of Los Angeles ("City"). The Project proposes a one-story addition to an existing three-story, 14,910-SF hotel, as well as the construction, use, and maintenance of an attached 15-story, 103-room hotel building and approximately 15,907-SF of commercial space, on the 0.26-acre site.

Our review concludes that the IS/MND fails to adequately evaluate the Project's hazards and hazardous materials, air quality, health risk, and greenhouse gas impacts. As a result, emissions and health risk impacts associated with construction and operation of the proposed Project are underestimated and inadequately addressed. An EIR should be prepared to adequately assess and mitigate the potential hazards and hazardous materials, air quality, health risk, and greenhouse gas impacts that the project may have on the surrounding environment.

Hazards and Hazardous Materials

Inadequate Analysis of Impacts

A Phase I Environmental Site Assessment (“ESA”) was not prepared for the Project site. The IS/MND found a less than significant impact based solely on a regulatory database search of the California Department of Toxics Substances Control Envirostor website¹ (p. 111).

A Phase I ESA is often included in CEQA documentation to identify hazardous materials issues that may pose a risk to the public, workers, or the environment, and which may require further investigation through the conduct of a Phase II ESA. Components of a Phase I include:

- a review of all known sites in the vicinity of the subject property that are on regulatory agency databases undergoing assessment or cleanup activities;
- an inspection;
- interviews with people knowledgeable about the property; and
- recommendations for further actions to address potential hazards.

Standards for performing a Phase I ESA have been established by the US EPA and the American Society for Testing and Materials Standards (ASTM).²

Phase I ESAs conclude with the identification of any “recognized environmental conditions” (RECs) and recommendations to address such conditions. A REC is the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property. If RECs are identified, then a Phase II ESA generally follows, which includes the collection of soil, soil vapor and groundwater samples, as necessary, to identify the extent of contamination and the need for cleanup to reduce exposure potential to the public.

A search of the Envirostor website, as performed for the IS/MND, is insufficient for determining Project impacts. Due diligence practices commonly used in CEQA proceedings include the preparation of a Phase I ESA, completed by a licensed environmental professional. The preparation of an EIR, to include a Phase I ESA, is necessary to identify recognized environmental conditions, if any, at the proposed Project site.

If a REC is identified, a Phase II should be conducted to sample for potential contaminants in soil, soil vapor and groundwater. Any contamination that is identified above regulatory screening levels, including California Office of Environmental Health Hazard Assessment’s Soil Screening Numbers³, should be further evaluated and cleaned up, if necessary, in coordination with the Regional Water Quality Control Board and the California Department of Toxics Substances Control.

¹ <https://www.envirostor.dtsc.ca.gov/public/>

² <http://www.astm.org/Standards/E1527.htm>

³ <http://oehha.ca.gov/risk/chhsltable.html>

Air Quality

Unsubstantiated Input Parameters Used to Estimate Project Emissions

The IS/MND's air quality analysis relies on emissions calculated with CalEEMod.2016.3.2 (p. 63).⁴

CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project-specific values, but the California Environmental Quality Act ("CEQA") requires that such changes be justified by substantial evidence.⁵ Once all of the values are inputted into the model, the Project's construction and operational emissions are calculated, and "output files" are generated. These output files disclose to the reader what parameters were utilized in calculating the Project's air pollutant emissions and make known which default values were changed as well as provide justification for the values selected.⁶

When reviewing the Project's CalEEMod output files, provided in the Air Quality Modeling Worksheets as Appendix A to the IS/MND, we found that several model inputs were not consistent with information disclosed in the IS/MND. As a result, the Project's construction and operational emissions are underestimated. An EIR should be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction and operation of the Project will have on local and regional air quality.

Failure to Model All Proposed Land Use Types

According to the IS/MND, the Project proposes to construct "15,907 square feet of commercial space comprised of art gallery, café, restaurant, and bar uses" (p. 22). As such, the models should have included at least 15,907-SF of commercial space. However, review of the CalEEMod output files demonstrates that the "Rendon Hotel Project" model fails to include the proposed commercial land use space (see excerpt below) (Appendix A, pp. 3, 28).

Land Uses	Size	Metric	Lot Acreage	Floor Surface Area
Hotel	103.00	Room	0.26	67,615.00

As you can see in the excerpt above, the model fails to distinguish between the hotel and commercial land uses. This inconsistency presents an issue, as CalEEMod includes 63 different land use types that are each assigned a distinctive set of energy usage emission factors.⁷ Furthermore, each land use type includes a specific trip rate that CalEEMod uses to calculate mobile-source emissions.⁸ Thus, by failing to

⁴ CAPCOA (November 2017) CalEEMod User's Guide, http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4.

⁵ CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 1, 9.

⁶ CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 11, 12 – 13. A key feature of the CalEEMod program is the "remarks" feature, where the user explains why a default setting was replaced by a "user defined" value. These remarks are included in the report.

⁷ "CalEEMod User's Guide, Appendix D." CAPCOA, September 2016, available at: http://www.aqmd.gov/docs/default-source/caleemod/upgrades/2016.3/05_appendix-d2016-3-1.pdf?sfvrsn=2.

⁸ CalEEMod User's Guide, available at: http://www.aqmd.gov/docs/default-source/caleemod/upgrades/2016.3/01_user-39-s-guide2016-3-1.pdf?sfvrsn=2, p. 14.

include all proposed land use types, the model may underestimate the Project’s construction-related and operational emissions and should not be relied upon to determine Project significance.

Unsubstantiated Reduction to Acres of Grading Value

Review of the CalEEMod output files demonstrates that the “Rendon Hotel Project” model includes a reduction to the default acres of grading value (see excerpt below) (Appendix A, pp. 4, 29).

Table Name	Column Name	Default Value	New Value
tblGrading	AcresOfGrading	22.00	0.26

As you can see in the excerpt above, the acres of grading value was reduced by approximately 99%, from the default value of 22.00- to 0.26-acres. As previously mentioned, the CalEEMod User’s Guide requires any changes to model defaults be justified.⁹ According to the “User Entered Comments & Non-Default Data” table, the justification provided for these changes is: “Estimates approximately 2,500 cy export for one-level subterranean” (Appendix A, pp. 4, 29).

However, this change remains unsupported for three reasons. First, the justification provided by the “User Entered Comments & Non-Default Data” table fails to address the revised acres of grading value. Second, the IS/MND and associated documents fail to mention or justify this change. Third, according to the CalEEMod User’s Guide:

“[T]he dimensions (e.g., length and width) of the grading site have no impact on the calculation, only the total area to be graded. In order to properly grade a piece of land multiple passes with equipment may be required. The acres is based on the equipment list and days in grading or site preparation phase according to the anticipated maximum number of acres a given piece of equipment can pass over in an 8-hour workday.”¹⁰

Thus, as the dimensions of the Project site have no impact on the acres of grading value, and the IS/MND fails to substantiate this change, we cannot verify the revised acres of grading value.

This unsubstantiated reduction presents an issue, as CalEEMod uses the acres of grading value to estimate the dust emissions associated with grading.¹¹ Thus, by including an unsubstantiated reduction to the default acres of grading value, the model may underestimate the Project’s construction-related emissions and should not be relied upon to determine Project significance.

⁹ CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 2, 9

¹⁰ “Appendix A Calculation Details for CalEEMod.” available at: http://www.agmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 9.

¹¹ “Appendix A Calculation Details for CalEEMod.” available at: http://www.agmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 9.

Unsubstantiated Reduction to Default Demolition Hauling Trip Number

Review of the CalEEMod output files demonstrates that the “Rendon Hotel Project” model includes a manual reduction to the default number of hauling trips required for demolition (see excerpt below) (Appendix A, pp. 5, 30).

Table Name	Column Name	Default Value	New Value
tblTripsAndVMT	HaulingTripNumber	25.00	16.00

As you can see in the excerpt above, the default demolition hauling trip number was manually reduced. As previously mentioned, the CalEEMod User’s Guide requires any changes to model defaults be justified.¹² According to the “User Entered Comments and Non-Default Data” table, the justification provided for these changes is: “Assumes 14 haul truck capacity and average 30 miles to disposal site” (Appendix A, pp. 4, 29). Furthermore, the IS/MND states:

“It is anticipated that 14 cy capacity haul trucks would be used to export soil, resulting in a total of approximately 358 haul round trips, or approximately eight round trips per day” (p. 147).

However, these justifications are insufficient for two reasons. First, the IS/MND fails to provide the number of hauling trips anticipated for demolition. Second, the IS/MND provides the amount of construction and demolition debris in tons, rather than cubic yards (“cy”) (see excerpt below) (p. 193, Table 4.27).

Table 4.27
Estimated Construction and Demolition Debris

Construction Activity	Size	Rate ^a	Generated Waste (tons)
Demolition			
Surface Asphalt	5,500 sf ^b	2,400 lbs/cy	122
Construction			
Hotel	51,708 sf	4.38 lbs/sf	113
Commercial	15,907 sf	3.89 lbs/sf	31
Total Debris:			266

As a result, we cannot verify the revised demolition hauling trip number based on a 14 cy haul truck capacity, and the change is unsubstantiated.

This unsubstantiated reduction presents an issue, as CalEEMod uses number of hauling trips to estimate the construction-related emissions associated with on-road vehicles.¹³ Thus, by including an unsubstantiated reduction to the default demolition hauling trip number, the model may underestimate the Project’s mobile-source construction-related emissions and should not be relied upon to determine Project significance.

¹² CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 2, 9

¹³ CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 34.

Use of Underestimated Operational Vehicle Trip Rates

According to the Transportation Study, provided as Appendix G to the IS/MND, the Project is expected to generate approximately 732 average daily vehicle trips (see excerpt below) (Appendix G, p. 32).

Table 6
Project Weekday Trip Generation Summary¹

Land Use	ITE Code	Intensity ²	Average Weekday	AM Peak Hour			PM Peak Hour		
				In	Out	Total	In	Out	Total
Trip Generation Rates									
Hotel	310	1 rm	8.38	59%	41%	0.47	51%	49%	0.60
Trip Generation Summary									
Description	Size	Average Weekday	AM Peak Hour			PM Peak Hour			
			In	Out	Total	In	Out	Total	
PROPOSED USE									
Lodging									
Hotel	103 rm	881	28	20	48	32	30	62	
15% Transit/Walk Adjustment ³		(129)	(4)	(3)	(7)	(5)	(4)	(9)	
Proposed Project Trips		732	24	17	41	27	26	53	

As such, the model for the proposed land uses should have included trip rates that reflect the number of average daily operational vehicle trips anticipated. However, review of the CalEEMod output files demonstrates that the “Rendon Hotel Project” model includes only 494.40, 495.43, and 360.50 weekday, Saturday, and Sunday average vehicle trips, respectively (Appendix A, pp. 21, 46).

Land Use	Average Daily Trip Rate		
	Weekday	Saturday	Sunday
Hotel	494.40	495.43	360.50
Total	494.40	495.43	360.50

As you can see in the excerpt above, the weekday, Saturday, and Sunday trip numbers are underestimated by approximately 238, 237, and 372 trips, respectively. As such, the trip rates inputted into the proposed land use models are underestimated and inconsistent with the information provided by the IS/MND.

These inconsistencies present an issue, as CalEEMod uses the operational vehicle trip rates to calculate the emissions associated with the Project’s operational on-road vehicles.¹⁴ Thus, by including underestimated operational vehicle trip rates, the model underestimates the Project’s mobile-source operational emissions and should not be relied upon to determine Project significance.

Unsubstantiated Changes to Operational Vehicle Trip Types and Lengths

Review of the CalEEMod output files demonstrates that the “Rendon Hotel Project” model includes several manual changes to the default operational vehicle trip types and lengths (see excerpt below) (Appendix A, pp. 5, 30).

¹⁴ “CalEEMod User Guide.” CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 35.

Table Name	Column Name	Default Value	New Value
tblVehicleTrips	CC_TL	8.40	6.77
tblVehicleTrips	CC_TTP	61.60	100.00
tblVehicleTrips	CNW_TL	6.90	0.00
tblVehicleTrips	CNW_TTP	19.00	0.00
tblVehicleTrips	CW_TL	16.60	0.00
tblVehicleTrips	CW_TTP	19.40	0.00

As you can see in the excerpt above, the model assumes that 100% of the Project's trips would be commercial to customer ("C-C") with a trip length of 6.77 miles. As previously mentioned, the CalEEMod User's Guide requires any changes to model defaults be justified.¹⁵ According to the "User Entered Comments and Non-Default Data" table, the justification provided for these changes is: "Trip rates adjusted based on LADOT VMT Calculator provided by Traffic Consultant" (Appendix A, pp. 4, 29).

However, these changes remain unsupported for two reasons. First, while the justification provided by the "User Entered Comments and Non-Default Data" table addresses the revisions to the operational vehicle trip rates, it fails to address the revised operational vehicle trip types or lengths. Second, the IS/MND and associated appendices fail to mention or substantiate the revised operational vehicle trip types and lengths whatsoever.

These unsubstantiated changes present an issue, as CalEEMod uses the operational vehicle trip types and lengths to calculate the emissions associated with the Project's operational on-road vehicles.¹⁶ Thus, by including unsubstantiated changes to the default operational vehicle trip types and lengths, the model may underestimate the Project's mobile-source operational emissions and should not be relied upon to determine Project significance.

Incorrect Application of Operational Mitigation Measures

Review of the CalEEMod output files demonstrates that the "Rendon Hotel Project" model includes the following area-, water-, and waste-related operational mitigation measures (see excerpts below) (Appendix A, pp. 23, 25, 48, 50):

Area-Related:

6.1 Mitigation Measures Area

No Hearths Installed
Use Low VOC Cleaning Supplies

¹⁵ "CalEEMod User Guide." CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 2, 9.

¹⁶ "CalEEMod User Guide." CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 35.

Water-Related:

7.1 Mitigation Measures Water

Apply Water Conservation Strategy
Install Low Flow Bathroom Faucet
Install Low Flow Kitchen Faucet
Install Low Flow Toilet
Install Low Flow Shower

Waste-Related:

8.1 Mitigation Measures Waste

Institute Recycling and Composting Services

As previously mentioned, the CalEEMod User's Guide requires any change to model defaults be justified.¹⁷ However, the "User Entered Comments & Non-Default Data" table fails to provide justifications for the inclusion of the above-mentioned area-, water-, and waste-related operational mitigation measures (Appendix A, pp. 4, 29). Furthermore, regarding the Project's compliance with measures and design features, the IS/MND states:

"The following describes the benefits and applicability of the Proposed Project's compliance measures and design features that serve to reduce the carbon footprint of the development...

Solid Waste Reduction Efforts. L.A. Green Building Code Section 5.408.1 and LAMC Section 66.32 require the construction contractor to obtain an AB 939 Compliance Permit certifying the delivery of the construction and demolition waste to a certified construction and demolition waste processing facility. Diversion efforts would be accomplished through source reduction, recycling, and composting. Finally, the Proposed Project is required by the California Solid Waste Reuse and Recycling Access Act of 1991 to provide adequate storage areas for collection and storage of recyclable waste materials. As such, a 50 percent reduction of a Project's waste stream to the local landfill would reduce methane emissions and thus lower the Project's contribution to global GHG emissions.

Water Conservation. As mandated by the L.A. Green Building Code, the Proposed Project would be required to provide separate submeters for individual leased, rented or other tenant spaces projected to consume more than 100 gallons per day and any building or addition that is

¹⁷ CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 2, 9

projected to consume more than 1,000 gallons per day. Plumbing fixtures would need to comply with one of the following: (1) a 20% reduction in the building's "water use baseline" as demonstrated in Table 5.303.2.2 of the Los Angeles Plumbing Code; or (2) comply with the maximum flow rates shown in Table 5.303.2.3 of the Plumbing Code. The Project would also be required to develop a water budget for landscape irrigation use and install automatic irrigation systems with weather or soil moisture-based controllers" (p.

However, the inclusion of these measures remains unsubstantiated for two reasons.

First, the IS/MND and associated documents fail to mention that the Project would use low VOC cleaning supplies and not include hearths.

Second, simply because the IS/MND states that the Project would comply with the L.A. Green Building Code does not justify the inclusion of the above-mentioned water- and waste-related mitigation measures in the model. According to the Association of Environmental Professionals' ("AEP") *CEQA Portal Topic Paper* on mitigation measures:

"By definition, mitigation measures are not part of the original project design. Rather, mitigation measures are actions taken by the lead agency to reduce impacts to the environment resulting from the original project design. Mitigation measures are identified by the lead agency after the project has undergone environmental review and are above-and-beyond existing laws, regulations, and requirements that would reduce environmental impacts" (emphasis added).¹⁸

As you can see in the excerpt above, mitigation measures "are not part of the original project design" and are intended to go "above-and-beyond" existing regulatory requirements. Furthermore, the report states:

"While not "mitigation", a good practice is to include those project design feature(s) that address environmental impacts in the mitigation monitoring and reporting program (MMRP). Often the MMRP is all that accompanies building and construction plans through the permit process. If the design features are not listed as important to addressing an environmental impact, it is easy for someone not involved in the original environmental process to approve a change to the project that could eliminate one or more of the design features without understanding the resulting environmental impact" (emphasis added).¹⁹

As you can see in the excerpts above, project design features are not mitigation measures and may be eliminated from the Project's design. Thus, as the above-mentioned area-, water-, and waste-related operational mitigation measures are not formally included as mitigation measures, we cannot guarantee that they would be implemented, monitored, and enforced on the Project site. By incorrectly including

¹⁸ "CEQA Portal Topic Paper Mitigation Measures." AEP, February 2020, available at: <https://cegaportal.org/tp/CEQA%20Mitigation%202020.pdf>, p. 5.

¹⁹ "CEQA Portal Topic Paper Mitigation Measures." AEP, February 2020, available at: <https://cegaportal.org/tp/CEQA%20Mitigation%202020.pdf>, p. 6.

several area-, water-, and waste-related operational mitigation measures, the model underestimates the Project's operational emissions and should not be relied upon to determine Project significance.

Diesel Particulate Matter Health Risk Emissions Inadequately Evaluated

The IS/MND concludes that the proposed Project would have a less-than-significant health risk impact, without conducting a quantified construction or operational health risk analysis ("HRA") (p. 89).

Specifically, regarding the potential health risk impacts associated with Project construction, the IS/MND states:

"Given the short-term construction schedule of approximately 18 months, the Proposed 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 (18 out of 840 months of a 70-year lifetime), health risks associated with DPM emissions during construction would be less than significant. Moreover, the Proposed Project would be required to comply with the CARB Air Toxics Control Measure that limits diesel powered equipment and vehicle idling to no more than 5 minutes at a location. In addition, as discussed above, the Proposed Project would not result in a localized significant impact. Therefore, the Proposed Project would result in a less than significant impact related to construction TACs" (p. 69).

As demonstrated above, the IS/MND concludes that the Project would result in a less-than-significant impact with respect to construction-related toxic air contaminants ("TACs"), because construction would be short-term, the Project would be required to comply with the CARB Air Toxics Control Measure, and the Project's localized emissions would be less than significant. Furthermore, regarding the potential health risk impacts associated with Project operation, the IS/MND states:

"The Proposed Project consists of a hotel development. These uses would not support any land uses or activities that would involve the use, storage, or processing of carcinogenic or noncarcinogenic toxic air contaminants. As such, no significant toxic airborne emissions would result from Proposed Project implementation... Therefore, impacts associated with the release of toxic air contaminants would be less than significant" (p. 69).

As demonstrated above, the IS/MND concludes that the Project would result in a less-than-significant impact with respect to operational TACs, because the proposed land uses "would not support any land uses or activities that would involve the use, storage, or processing of carcinogenic or noncarcinogenic toxic air contaminants" (p. 69). However, the IS/MND's evaluation of the Project's potential health risk impacts, as well as the subsequent less-than-significant impact conclusion, is incorrect for four reasons.

First, the use of the LST method to determine the Project's health risk impacts on nearby, existing sensitive receptors is incorrect. While the LST method assesses the impact of pollutants at a local level, it only evaluates impacts from criteria air pollutants. According to the *Final Localized Significance Threshold Methodology* document prepared by the SCAQMD, the LST analysis is only applicable to NO_x,

CO, PM₁₀, and PM_{2.5} emissions, which are collectively referred to as criteria air pollutants.²⁰ Because the LST method can only be applied to criteria air pollutants, this method cannot be used to determine whether emissions from TACs, specifically diesel particulate matter (“DPM”), a known human carcinogen, will result in a significant health risk impact to nearby sensitive receptors. As a result, health impacts from exposure to TACs, such as DPM, were not analyzed, thus leaving a gap in the IS/MND’s analysis.

Second, despite the IS/MND’s qualitative claims that construction-related TAC emissions would be less than significant, construction of the proposed Project will produce emissions of DPM through the exhaust stacks of construction equipment over a potential construction period of approximately 18 months (p. 44). Furthermore, despite the IS/MND’s qualitative claim that the proposed land uses would not generate TACs, the Transportation Study indicates that the proposed land uses are expected to generate approximately 732 average daily vehicle trips, which will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions (Appendix G, p. 32). However, the IS/MND’s vague discussion of potential Project-generated TACs fails to indicate the concentrations at which such pollutants would trigger adverse health effects. Thus, without making a reasonable effort to connect the Project’s construction-related and operational TAC emissions to the potential health risks posed to nearby receptors, the IS/MND is inconsistent with CEQA’s requirement to correlate the increase in emissions generated by the Project with the potential adverse impacts on human health.

Third, by concluding that the Project would result in a less-than-significant health risk impact without preparing a quantified construction operational HRA for the Project, the IS/MND is inconsistent with the most recent guidance published by the Office of Environmental Health Hazard Assessment (“OEHHA”), the organization responsible for providing guidance on conducting HRAs in California. OEHHA released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments* in February 2015.²¹ This guidance document describes the types of projects that warrant the preparation of an HRA. The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.²² As the Project’s proposed 18-month construction duration vastly exceeds the 2-month requirement set forth by OEHHA, it is clear that the Project meets the threshold warranting a quantified HRA under OEHHA guidance (p. 44). Furthermore, the OEHHA document recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (“MEIR”).²³ Even though we were not provided with the expected lifetime of the Project, we can

²⁰ “Final Localized Significance Threshold Methodology.” SCAQMD, Revised July 2008, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/final-lst-methodology-document.pdf>.

²¹ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/hotspots2015.html

²² “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-18

²³ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, we recommend that health risk impacts from Project operation also be evaluated, as a 30-year exposure duration vastly exceeds the 6-month requirement set forth by OEHHA. These recommendations reflect the most recent state health risk policies, and as such, we recommend that an analysis of health risk impacts posed to nearby sensitive receptors from Project operation be included in an EIR for the Project.

Fourth, by claiming a less than significant impact without conducting a quantified construction or operational HRA for nearby, existing sensitive receptors, the IS/MND fails to compare the excess health risk impact to the applicable SCAQMD numeric threshold of 10 in one million, and lacks evidence to support its conclusion that the health risk would be under the threshold.²⁴ Thus, pursuant to CEQA, an analysis of the health risk posed to nearby, existing receptors from Project construction and operation should have been conducted.

Screening-Level Analysis Indicates a Potentially Significant Health Risk Impact

In order to conduct our screening-level risk analysis we relied upon AERSCREEN, which is a screening level air quality dispersion model.²⁵ The model replaced SCREEN3, and AERSCREEN is included in the OEHHA²⁶ and the California Air Pollution Control Officers Associated (“CAPCOA”)²⁷ guidance as the appropriate air dispersion model for Level 2 health risk screening analyses (“HRSAs”). A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.

We prepared a preliminary HRA of the Project’s construction and operational health-related impact to residential sensitive receptors using the annual PM₁₀ exhaust estimates from the IS/MND’s CalEEMod output files. Consistent with recommendations set forth by OEHHA, we assumed residential exposure begins during the third trimester stage of life. The IS/MND’s CalEEMod model indicates that construction activities will generate approximately 157 pounds of DPM over the 547-day construction period. The AERSCREEN model relies on a continuous average emission rate to simulate maximum downward concentrations from point, area, and volume emission sources. To account for the variability in equipment usage and truck trips over Project construction, we calculated an average DPM emission rate by the following equation:

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{157.2 \text{ lbs}}{547 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = \mathbf{0.00151 \text{ g/s}}$$

²⁴ “South Coast AQMD Air Quality Significance Thresholds.” SCAQMD, April 2019, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf>.

²⁵ U.S. EPA (April 2011) AERSCREEN Released as the EPA Recommended Screening Model, http://www.epa.gov/ttn/scram/guidance/clarification/20110411_AERSCREEN_Release_Memo.pdf

²⁶ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf

²⁷ CAPCOA (July 2009) Health Risk Assessments for Proposed Land Use Projects, http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf.

Using this equation, we estimated a construction emission rate of 0.00151 grams per second (“g/s”). Subtracting the 547-day construction period from the total residential duration of 30 years, we assumed that after Project construction, the sensitive receptor would be exposed to the Project’s operational DPM for an additional 28.5 years, approximately. The Project’s operational CalEEMod emissions indicate that operational activities will generate approximately 22 pounds of DPM per year throughout operation. Applying the same equation used to estimate the construction DPM rate, we estimated the following emission rate for Project operation:

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{22.4 \text{ lbs}}{365 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = \mathbf{0.000322 \text{ g/s}}$$

Using this equation, we estimated an operational emission rate of 0.000322 g/s. Construction and operational activity was simulated as a 0.26-acre rectangular area source in AERSCREEN with dimensions of 42 by 25 meters. A release height of three meters was selected to represent the height of exhaust stacks on operational equipment and other heavy-duty vehicles, and an initial vertical dimension of one and a half meters was used to simulate instantaneous plume dispersion upon release. An urban meteorological setting was selected with model-default inputs for wind speed and direction distribution.

The AERSCREEN model generates maximum reasonable estimates of single-hour DPM concentrations from the Project site. EPA guidance suggests that in screening procedures, the annualized average concentration of an air pollutant be estimated by multiplying the single-hour concentration by 10%.²⁸ According to the IS/MND, the nearest sensitive receptors are “the future multi-family residences located immediately to the north and west of the Project Site” (p. 66). Thus, the single-hour concentration estimated by AERSCREEN for Project construction is approximately 15.71 µg/m³ DPM at approximately 25 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 1.571 µg/m³ for Project construction at the MEIR. For Project operation, the single-hour concentration estimated by AERSCREEN is 3.355 µg/m³ DPM at approximately 25 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 0.3355 µg/m³ for Project operation at the MEIR.

We calculated the excess cancer risk to the MEIR using applicable HRA methodologies prescribed by OEHHA. Consistent with the 547-day construction schedule included in the Project’s CalEEMod output files, the annualized average concentration for Project construction was used for the entire third trimester of pregnancy (0.25 years) and the first 1.25 years of the infantile stage of life (0 – 2 years); and the annualized averaged concentration for operation was used for the remainder of the 30-year exposure period, which makes up the remaining 0.75 years of the infantile stage of life, the entire child stage of life (2 – 16 years), and the entire the adult stage of life (16 – 30 years).

²⁸ “Screening Procedures for Estimating the Air Quality Impact of Stationary Sources Revised.” EPA, 1992, *available at*: http://www.epa.gov/ttn/scram/guidance/guide/EPA-454R-92-019_OCR.pdf; *see also* “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf> p. 4-36.

Consistent with OEHHA guidance and recommended by the SCAQMD, BAAQMD, and SJVAPCD guidance, we used Age Sensitivity Factors (“ASF”) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.^{29, 30, 31} According to this guidance, the quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant) as well as multiplied by a factor of three during the child stage of life (2 – 16 years). We also included the quantified cancer risk without adjusting for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution in accordance with older OEHHA guidance from 2003. This guidance utilizes a less health protective scenario than what is currently recommended by SCAQMD, the air quality district with jurisdiction over the City, and several other air districts in the state. Furthermore, in accordance with the guidance set forth by OEHHA, we used the 95th percentile breathing rates for infants.³² Finally, according to SCAQMD guidance, we used a Fraction of Time At Home (“FAH”) Value of 1 for the 3rd trimester and infant receptors.³³ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days. The results of our calculations are shown below.

²⁹ “Draft Environmental Impact Report (DEIR) for the Proposed The Exchange (SCH No. 2018071058).” SCAQMD, March 2019, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2019/march/RVC190115-03.pdf?sfvrsn=8>, p. 4.

³⁰ “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2017, *available at*: http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 56; see also “Recommended Methods for Screening and Modeling Local Risks and Hazards.” BAAQMD, May 2011, *available at*: <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx>, p. 65, 86.

³¹ “Update to District’s Risk Management Policy to Address OEHHA’s Revised Risk Assessment Guidance Document.” SJVAPCD, May 2015, *available at*: <https://www.valleyair.org/busind/pto/staff-report-5-28-15.pdf>, p. 8, 20, 24.

³² “Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics ‘Hot Spots’ Information and Assessment Act,” July 2018, *available at*: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588supplementalguidelines.pdf>, p. 16.

“Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>

³³ “Risk Assessment Procedures for Rules 1401, 1401.1, and 212.” SCAQMD, August 2017, *available at*: http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1401/riskassessmentprocedures_2017_080717.pdf, p. 7.

The Maximum Exposed Individual at an Existing Residential Receptor (MEIR)

Activity	Duration (years)	Concentration (ug/m3)	Breathing Rate (L/kg-day)	Cancer Risk without ASFs*	ASF	Cancer Risk with ASFs*
Construction	0.25	1.571	361	2.1E-06	10	2.1E-05
3rd Trimester Duration	0.25			2.1E-06	3rd Trimester Exposure	2.1E-05
Construction	1.25	1.571	1090	3.2E-05	10	3.2E-04
Operation	0.75	0.3355	1090	4.1E-06	10	4.1E-05
Infant Exposure Duration	2.00			3.6E-05	Infant Exposure	3.6E-04
Operation	14.00	0.3355	572	4.0E-05	3	1.2E-04
Child Exposure Duration	14.00			4.0E-05	Child Exposure	1.2E-04
Operation	14.00	0.3355	261	1.3E-05	1	1.3E-05
Adult Exposure Duration	14.00			1.3E-05	Adult Exposure	1.3E-05
Lifetime Exposure Duration	30.00			9.2E-05	Lifetime Exposure	5.2E-04

* We, along with CARB and SCAQMD, recommend using the more updated and health protective 2015 OEHHA guidance, which includes ASFs.

As demonstrated in the table above, the excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 25 meters away, over the course of Project construction and operation, utilizing age sensitivity factors, are approximately 13, 120, 360, and 21 in one million, respectively. The excess cancer risk over the course of a residential lifetime (30 years), utilizing age sensitivity factors, is approximately 520 in one million. The 3rd trimester of pregnancy, infant, child, adult, and lifetime cancer risks exceed the SCAQMD threshold of 10 in one million, thus resulting in a potentially significant impact not previously addressed or identified by the IS/MND. Utilizing age sensitivity factors is the most conservative, health-protective analysis according to the most recent guidance by OEHHA and reflects recommendations from the air district. Results without age sensitivity factors are presented in the table above, although we **do not** recommend utilizing these values for health risk analysis. Regardless, the excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at the MEIR located approximately 25 meters away, over the course of Project construction and operation, without age sensitivity factors, are approximately 13, 40, 36, and 2.1 in one million, respectively. The excess cancer risk over the course of a residential lifetime (30 years), without age sensitivity factors, is approximately 92 in one million. The infant, child, adult, and lifetime cancer risk, without age sensitivity factors, exceed the SCAQMD threshold of 10 in one million, thus resulting in a potentially significant impact not previously addressed or identified by the IS/MND. While we recommend the use of age sensitivity factors, health risk impacts exceed the SCAQMD threshold regardless.

An agency must include an analysis of health risks that connects the Project's air emissions with the health risk posed by those emissions. Our analysis represents a screening-level HRA, which is known to be conservative and tends to err on the side of health protection.³⁴ The purpose of the screening-level construction and operational HRA shown above is to demonstrate the link between the proposed Project's emissions and the potential health risk. Our screening-level HRA demonstrates that construction and operation of the Project could result in a potentially significant health risk impact, when correct exposure assumptions and up-to-date, applicable guidance are used. Therefore, since our screening-level HRA indicates a potentially significant impact, the City should prepare a Project-specific EIR with an HRA which makes a reasonable effort to connect the Project's air quality emissions and the potential health risks posed to nearby receptors. Thus, the City should prepare an updated, quantified air pollution model as well as an updated, quantified refined health risk analysis which adequately and accurately evaluates health risk impacts associated with both Project construction and operation.

Greenhouse Gas

Failure to Adequately Evaluate Greenhouse Gas Impacts

The IS/MND estimates that the Project would generate net annual greenhouse gas ("GHG") emissions of 898.90 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year"), after the inclusion of GHG reduction measures (see excerpt below) (p. 104).

Table 4.9
Proposed Project Operational Greenhouse Gas Emissions

Emissions Source	Estimated Project Generated CO ₂ e Emissions (Metric Tons per Year)		
	Base Project Without GHG Reduction Features	Proposed Project	Percent Reduction ^a
Area	<0.01	<0.01	0%
Energy	373.08	373.08	0%
Mobile (Motor Vehicles)	591.04 ^{b,c}	473.98	20%
Stationary	4.59	4.59	0%
Waste	28.36	14.18	50%
Water	24.34	19.47	20%
Construction Emissions ^d	13.60	13.60	--
Total GHG Emissions:	1,035.01	898.90	13%
Notes: ^a The Percent Reduction is not a quantitative threshold of significance, but shows the efficacy of the Project's compliance with the various regulations, plans and policies that have been adopted with the intent of reducing GHG emissions. ^b Based on Proposed Project mobile source GHG emissions excluding Mitigation Measures and reduced VMT. ^c Calculated proportionately based on Proposed Project mobile trips with reductions 494 trips to trips without reductions 616 trips and multiplied with the GHG emissions of 473.98 MTCO ₂ e. ^d The total construction GHG emissions were amortized over 30 years and added to the operation of the Project. Calculation data and results provided in Appendix E, Greenhouse Gas Emissions Worksheets.			

³⁴ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>, p. 1-5

However, the IS/MND does not compare the Project's net annual GHG emissions estimates to a quantitative GHG threshold, stating:

"In the absence of any adopted numeric threshold, the significance of the Project's GHG emissions is evaluated consistent with CEQA Guidelines Section 15064.4(b)(2) by considering whether the Project complies with applicable plans, policies, regulations, and requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. For this Project, as a land use development project, the most directly applicable adopted regulatory plan to reduce GHG emissions is the 2020 RTP/SCS, which is designed to achieve regional GHG reductions from the land use and transportation sectors as required by SB 375 and the State's long-term climate goals. This analysis also considers consistency with regulations or requirements set forth by the 2008 Scoping Plan and subsequent updates SB 375, SCAG's 2020 RTP/SCS, and the L.A. Green Building Code" (p. 103).

As demonstrated in the excerpt above, the Project relies upon the Project's consistency with CARB's 2017 *Scoping Plan*, SB 375, SCAG's 2020 RTP/SCS, and the L.A. Green Building Code in order to conclude that the Project would result in a less-than-significant GHG impact. However, the IS/MND'S GHG analysis, as well as the subsequent less-than-significant impact conclusion, is incorrect for four reasons.

- (1) The IS/MND's quantitative GHG analysis relies upon an incorrect and unsubstantiated air model;
- (2) The IS/MND's unsubstantiated air model indicates a potentially significant impact;
- (3) The IS/MND fails to consider the performance-based standards under CARB's *Scoping Plan*; and
- (4) The IS/MND fails to consider the performance-based standards under SCAG's RTP/SCS.

1) Incorrect and Unsubstantiated Quantitative Analysis of Emissions

As previously stated, the IS/MND estimates that the Project would generate net annual GHG emissions of 898.90 MT CO₂e/year, after the inclusion of GHG reduction measures (p. 104). However, the IS/MND's quantitative GHG analysis is unsubstantiated. As previously discussed, when we reviewed the Project's CalEEMod output files, provided in the Greenhouse Gas Emissions Worksheets as Appendix E to the IS/MND, we found that several of the values inputted into the model are not consistent with information disclosed in the IS/MND. As a result, the model underestimates the Project's emissions, and the IS/MND's quantitative GHG analysis should not be relied upon to determine Project significance. An EIR should be prepared that adequately assesses the potential GHG impacts that construction and operation of the proposed Project may have on the surrounding environment.

2) Failure to Identify a Potentially Significant GHG Impact

The IS/MND's incorrect and unsubstantiated air model indicates a potentially significant GHG impact, when applying the widely-used 2030 "Substantial Progress" threshold of 660 MT CO₂e/year³⁵ and AEP

³⁵ See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, *available at*: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YlxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, *available at*: "SOLAR4AMERICA ICE

“2030 Land Use Efficiency Threshold” of 2.6 metric tons of carbon dioxide equivalents per service population per year (“MT CO₂e/SP/year”).³⁶ In support of thresholds for the 2030 target, AEP guidance states:

“Once the state has a full plan for 2030 (which is expected in 2017), and then a project with a horizon between 2021 and 2030 should be evaluated based on a threshold using the 2030 target. A more conservative approach would be to apply a 2030 threshold based on SB 32 for any project with a horizon between 2021 and 2030 regardless of the status of the Scoping Plan Update” (emphasis added).³⁷

As the California Air Resources Board (“CARB”) adopted *California’s 2017 Climate Change Scoping Plan* in November of 2017, the proposed Project “should be evaluated based on a threshold using the 2030 target,” according to the relevant guidance referenced above. Thus, in an effort to evaluate the Project’s GHG emissions quantitatively, we compared the Project’s GHG emissions, as estimated by the IS/MND, to the widely-used 2030 “Substantial Progress” threshold of 660 MT CO₂e/SP/year³⁸ and AEP “2030 Land Use Efficiency Threshold” of 2.6 MT CO₂e/SP/year.³⁹

As previously stated, the IS/MND estimates that the Project would generate net annual GHG emissions of 898.90 MT CO₂e/year (p. 104). Furthermore, according to CAPCOA’s *CEQA & Climate Change* report, service population is defined as “the sum of the number of residents and the number of jobs supported by the project.”⁴⁰ The IS/MND estimates that the Project would employ approximately 216 people upon buildout (p. 127). As the Project does not propose any residential land uses, we estimate a service population of 216 people.⁴¹ Dividing the Project’s GHG emissions, as estimated by the IS/MND, by a

FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT.” City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

³⁶ “Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California.” Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40.

³⁷ “Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California.” Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40.

³⁸ See: “JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT.” City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YixuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; “TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT.” City of Fremont, February 2020, available at: “SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT.” City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

³⁹ “Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California.” Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40.

⁴⁰ CAPCOA (Jan. 2008) *CEQA & Climate Change*, p. 71-72, <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf>.

⁴¹ Calculated: 216 employees + 0 residents = 216 service population.

service population value of 216 people, we find that the Project would emit approximately 4.2 MT CO₂e/SP/year (see table below).⁴²

IS/MND Modeling Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Net Annual GHG Emissions	899
Threshold	660
Exceed?	Yes
Service Population	216
Service Population Efficiency	4.2
Threshold	2.6
Exceed?	Yes

As demonstrated above, the Project’s estimated net annual GHG emissions and service population efficiency value exceed the 2030 “Substantial Progress” threshold of 660 MT CO₂e/SP/year and AEP’s “2030 Land Use Efficiency Threshold” of 2.6 MT CO₂e/SP/year, respectively. As a result, the IS/MND’s less-than-significant GHG impact conclusion should not be relied upon. An EIR should be prepared for the Project and mitigation measures should be implemented to reduce the Project’s GHG emissions to less-than-significant levels.

3) Failure to Consider Performance-Based Standards Under CARB’s 2017 Scoping Plan

As previously mentioned, the Project relies upon the Project’s consistency with CARB’s 2017 *Scoping Plan* in order to conclude that the Project would result in a less-than-significant GHG impact (p. 103). However, review of the Project documents demonstrates that the IS/MND fails to consider the performance-based standards under the CARB’s 2017 *Scoping Plan*.

i. Passenger & Light Duty VMT Per Capita Benchmarks per SB 375

In reaching the State’s long-term GHG emission reduction goals, CARB’s 2017 *Scoping Plan* explicitly cites to SB 375 and the VMT reductions anticipated under the implementation of Sustainable Community Strategies.⁴³ CARB has identified the population and daily VMT from passenger autos and light-duty vehicles at the state and county level for each year between 2010 to 2050 under a “baseline scenario” that includes “current projections of VMT included in the existing Regional Transportation Plans/Sustainable Communities Strategies (RTP/SCSs) adopted by the State’s 18 Metropolitan Planning Organizations (MPOs) pursuant to SB 375 as of 2015.”⁴⁴ By dividing the projected daily VMT by the population, we calculated the daily VMT per capita for each year at the state and county level for 2010

⁴² Calculated: (898.90 MT CO₂e/year) / (216 service population) = (4.2 MT CO₂e/SP/year).

⁴³ “California’s 2017 Climate Change Scoping Plan.” CARB, November 2017, *available at*: https://ww3.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf, p. 25, 98, 101-103.

⁴⁴ “Supporting Calculations for 2017 Scoping Plan-Identified VMT Reductions,” Excel Sheet “Readme.” CARB, January 2019, *available at*: https://ww2.arb.ca.gov/sites/default/files/2019-01/sp_mss_vmt_calculations_jan19_0.xlsx.

(baseline year), 2024 (Project operational year), and 2030 (target years under SB 32) (see table below and Attachment B).

2017 Scoping Plan Daily VMT Per Capita						
	Los Angeles County			State		
Year	Population	LDV VMT Baseline	VMT Per Capita	Population	LDV VMT Baseline	VMT Per Capita
2010	9,838,771	216,979,221.64	22.05	37,335,085	836,463,980.50	22.40
2024	10,627,846	219,237,756.72	20.63	41,994,283	926,776,780.89	22.07
2030	10,868,614	215,539,586.12	19.83	43,939,250	957,178,153.20	21.78

The below table compares the 2017 *Scoping Plan* daily VMT per capita values against the daily VMT per capita values for the Project based on the SWAPE's updated modeling (see table below and Attachment B).

Daily VMT Per Capita from Passenger & Light-Duty Trucks, Exceedances under 2017 Scoping Plan Performance-Based SB 375 Benchmarks	
Sources	SWAPE Modeling
Annual VMT from Auto & Light-Duty Vehicles	2,360,016
Daily VMT from Auto & Light-Duty Vehicles	6,466
Service Population	216
Daily VMT Per Capita	29.93
2017 Scoping Plan Benchmarks, Statewide	
22.40 VMT (2010 Baseline) Exceed?	Yes
22.07 VMT (2024 Projected) Exceed?	Yes
21.78 VMT (2030 Projected) Exceed?	Yes
2017 Scoping Plan Benchmarks, Los Angeles County Specific	
22.05 VMT (2010 Baseline) Exceed?	Yes
20.63 VMT (2024 Projected) Exceed?	Yes
19.83 VMT (2030 Projected) Exceed?	Yes

As shown above, the SWAPE's updated modeling estimates that the Project exceeds the CARB 2017 *Scoping Plan* projections for 2010, 2024, and 2030. Because the exceeds the CARB 2017 *Scoping Plan* performance-based daily VMT per capita projections, the Project conflicts with the CARB 2017 *Scoping Plan*. As such, a Project-specific EIR should be prepared for the proposed Project to provide additional information and analysis demonstrating that the Project would result in a less-than-significant GHG impact.

4) Failure to Consider Performance-based Standards under SCAG's RTP/SCS

As previously mentioned, the Project relies upon the Project's consistency with SCAG's 2020-2045 RTP/SCS in order to conclude that the Project would result in a less-than-significant GHG impact (p. 103). However, review of the Project documents demonstrates that the IS/MND fails to consider the performance-based standards under SCAG's 2020-2045 RTP/SCS, such as: i) per capita GHG emission targets, or ii) daily vehicle miles traveled ("VMT") per capita benchmarks.

i. SB 375 Per Capita GHG Emission Goals

SB 375 was signed into law in September 2008 to enhance the state's ability to reach AB 32 goals by directing CARB to develop regional 2020 and 2035 GHG emission reduction targets for passenger vehicles (autos and light-duty trucks). In March 2018, CARB adopted updated regional targets requiring a 19 percent decrease in VMT for the SCAG region by 2035. This goal is reflected in SCAG's 2020 RTP/SCS Program Environmental Impact Report ("PEIR"),⁴⁵ in which the 2020 RTP/SCS PEIR updates the per capita emissions to 21.3 lbs/day in 2020 and 18.8 lbs/day in 2035 (see excerpt below).⁴⁶

**Table 3.8-10
SB 375 Analysis**

	2005 (Baseline)	2020 (Plan)	2035 (Plan)
Resident population (per 1,000)	17,161	19,194	21,110
CO2 emissions (per 1,000 tons)	204.0 ^{a/}	204.5 ^{b/}	198.6 ^{b/}
Per capita emissions (pounds/day)	23.8	21.3	18.8
% difference from Plan (2020) to Baseline (2005)			-8%
% difference from Plan (2035) to Baseline (2005)			-19% ^{c/}

Note:

/a/ Based on EMFAC2007

/b/ Based on EMFAC2014 and SCAG modeling, 2019.

/c/ Includes off-model adjustments for 2035 and 2045

Source: SCAG modeling, 2019.

<http://www.scag.ca.gov/committees/CommitteeDocLibrary/jointRCPC110515fullagn.pdf>

In order to evaluate consistency with this SB 375 objective and SCAG's RTP/SCS performance-based goals, SWAPE calculated the Project's per-capita CO₂ emissions from passenger and light duty vehicles (see Attachment B). First, total annual GHG mobile emissions were multiplied by the percentage of auto and light-duty truck fleet mix, then converted into total pounds per day, then divided by the estimated service population of 216. The below table shows the per capita emissions for the Project based on SWAPE's updated modeling (see table below and Attachment B).

⁴⁵ "Connect SoCal Certified Final Program Environmental Impact Report." SCAG, May 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocial_complete.pdf?1607981618.

⁴⁶ "Connect SoCal Certified Final Program Environmental Impact Report." SCAG, May 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocial_complete.pdf?1607981618, p. 3.8-74.

CO ₂ e Per Capita Emissions from Passenger & Light-Duty Trucks,	
Exceedances under RTP/SCS Performance-Based SB 375 Goals	
Sources	Project
	SWAPE Modeling
Annual Mobile Emissions (MT CO ₂ e/year)	1,020.28
Passenger & Light-Duty Fleet Mix (%)	91.22%
Daily CO ₂ e Emissions (lbs/day)	5,621.31
Service Population	216
Per Capita Emissions (lbs/day)	26.02
21.3 lbs/day/SP (2020 Goal) Exceeded?	Yes
18.8 lbs/day/SP (2035 Goal) Exceeded?	Yes

As shown in the above table, when utilizing SWAPE's updated modeling, the Project would result in 26.02 pounds per day per service population ("lbs/day/SP"). This exceeds both SCAG's 2020 and 2035 targets of 21.3- and 18.8-lbs/day/SP, respectively, indicating that the Project is inconsistent with SCAG's RTP/SCS.

i. SB 375 RTP/SCS Daily VMT Per Capita Target

Under the SCAG's 2020 RTP/SCS, daily VMT per capita in the SCAG region should decrease from 23.2 VMT in 2016 to 20.7 VMT by 2045.⁴⁷ Daily VMT per capita in San Bernardino County should decrease from 22.2 to 19.2 VMT during that same period.⁴⁸

Here, however, the IS/MND fails to consider any of the abovementioned performance-based VMT targets. In order to evaluate consistency with the RTP/SCS's performance-based VMT reduction targets, SWAPE calculated the Project's VMT from passenger and light duty vehicles (calculations attached hereto as Attachment B). First, annual VMTs from passenger automobile and light-duty vehicle were calculated based on the CalEEMod default fleet mix, converted into daily VMT, and divided by the estimated service population of 216. The below table shows the daily VMT per capita for the Project based on SWAPE's updated modeling (see table below and Attachment B).

⁴⁷ "Connect SoCal." SCAG, September 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal-plan_0.pdf?1606001176, pp. 138.

⁴⁸ "Connect SoCal." SCAG, September 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal-plan_0.pdf?1606001176, pp. 138.

Daily VMT Per Capita from Passenger & Light-Duty Trucks, Exceedances under RTP/SCS Performance-Based SB 375 Target	
Sources	Project
	SWAPE Modeling
Annual VMT from Auto & Light-Duty Vehicles	2,360,016
Daily VMT from Auto & Light-Duty Vehicles	6,466
Service Population	216
Daily VMT Per Capita	29.93
2020 RTP/SCS Benchmarks, SCAG-Wide	
23.2 VMT (2016 Baseline) Exceed?	Yes
20.7 VMT (2045 Target) Exceed?	Yes
2020 RTP/SCS Benchmarks, Los Angeles County	
22.2 VMT (2016 Baseline) Exceed?	Yes
19.2 VMT (2045 Target) Exceed?	Yes

As shown in the above table, based on a service population of 216, the Project would result in 29.93 daily VMT per capita from passenger auto and light-duty truck vehicles. This exceeds all SCAG and Los Angeles County specific benchmarks and targets under SCAG's 2020-2045 *RTP/SCS*. Thus, based on SWAPE's updated modeling, the Project would exceed the 2016 baseline and 2045 target VMT per capita values for both Los Angeles County and the SCAG region as a whole, indicating that the Project conflicts with the SCAG's *RTP/SCS* and SB 375.

Feasible Mitigation Measures Available to Reduce Emissions

Our analysis demonstrates that the Project's health risk and GHG emissions may result in significant impacts and should be mitigated further. In an effort to reduce the Project's emissions, we identified several mitigation measures that are applicable to the proposed Project. Feasible mitigation measures can be found in CAPCOA's *Quantifying Greenhouse Gas Mitigation Measures*.⁴⁹ Therefore, to reduce the Project's emissions, consideration of the following measures should be made:

CAPCOA's <i>Quantifying Greenhouse Gas Mitigation Measures</i> ⁵⁰	
Measures – Energy	
<i>Building Energy Use</i>	
Install Programmable Thermostat Timers	
Obtain Third-party HVAC Commissioning and Verification of Energy Savings	

⁴⁹ <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>

⁵⁰ "Quantifying Greenhouse Gas Mitigation Measures." California Air Pollution Control Officers Association (CAPCOA), August 2010, available at: <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>, p.

Install Energy Efficient Appliances
Install Energy Efficient Boilers
<i>Lighting</i>
Install Higher Efficacy Public Street and Area Lighting
Limit Outdoor Lighting Requirements
Replace Traffic Lights with LED Traffic Lights
<i>Alternative Energy Generation</i>
Establish Onsite Renewable or Carbon-Neutral Energy Systems
Establish Onsite Renewable Energy System – Solar Power
Establish Onsite Renewable Energy System – Wind Power
Utilize a Combined Heat and Power System
Measures – Transportation
<i>Land Use/Location</i>
Increase Density
Increase Location Efficiency
Increase Diversity of Urban and Suburban Developments (Mixed Use)
Increase Destination Accessibility
Increase Transit Accessibility
Orient Project Toward Non-Auto Corridor
Locate Project near Bike Path/Bike Lane
<i>Neighborhood/Site Enhancements</i>
Provide Pedestrian Network Improvements, such as: <ul style="list-style-type: none"> • Compact, mixed-use communities • Interconnected street network • Narrower roadways and shorter block lengths • Sidewalks • Accessibility to transit and transit shelters • Traffic calming measures and street trees • Parks and public spaces • Minimize pedestrian barriers
Provide Traffic Calming Measures, such as: <ul style="list-style-type: none"> • Marked crosswalks • Count-down signal timers • Curb extensions • Speed tables • Raised crosswalks • Raised intersections • Median islands • Tight corner radii

<ul style="list-style-type: none"> • Roundabouts or mini-circles • On-street parking • Planter strips with trees • Chicanes/chokers
Implement a Neighborhood Electric Vehicle (NEV) Network.
Create Urban Non-Motorized Zones
Incorporate Bike Lane Street Design (on-site)
Provide Electric Vehicle Parking
Dedicate Land for Bike Trails
<i>Parking Policy/Pricing</i>
Unbundle Parking Costs from Property Cost
Implement Market Price Public Parking (On-Street)
Require Residential Area Parking Permits
<i>Commute Trip Reduction Programs</i>
<p>Implement Commute Trip Reduction (CTR) Program – Voluntary</p> <ul style="list-style-type: none"> • Carpooling encouragement • Ride-matching assistance • Preferential carpool parking • Flexible work schedules for carpools • Half time transportation coordinator • Vanpool assistance • Bicycle end-trip facilities (parking, showers and lockers) • New employee orientation of trip reduction and alternative mode options • Event promotions and publications • Flexible work schedule for employees • Transit subsidies • Parking cash-out or priced parking • Shuttles • Emergency ride home
<p>Implement Commute Trip Reduction (CTR) Program – Required Implementation/Monitoring</p> <ul style="list-style-type: none"> • Established performance standards (e.g. trip reduction requirements) • Required implementation • Regular monitoring and reporting
<p>Provide Ride-Sharing Programs</p> <ul style="list-style-type: none"> • Designate a certain percentage of parking spaces for ride sharing vehicles • Designating adequate passenger loading and unloading and waiting areas for ride-sharing vehicles • Providing a web site or messaging board for coordinating rides • Permanent transportation management association membership and funding requirement.
<p>Provide Ent of Trip Facilities, including:</p> <ul style="list-style-type: none"> • Showers • Secure bicycle lockers

<ul style="list-style-type: none"> • Changing spaces
<p>Encourage Telecommuting and Alternative Work Schedules, such as:</p> <ul style="list-style-type: none"> • Staggered starting times • Flexible schedules • Compressed work weeks
<p>Implement Commute Trip Reduction Marketing, such as:</p> <ul style="list-style-type: none"> • New employee orientation of trip reduction and alternative mode options • Event promotions • Publications
Implement Preferential Parking Permit Program
Implement Car-Sharing Program
Implement School Pool Program
Provide Employer-Sponsored Vanpool/Shuttle
Implement Bike-Sharing Programs
Implement School Bus Program
<p>Price Workplace Parking, such as:</p> <ul style="list-style-type: none"> • Explicitly charging for parking for its employees; • Implementing above market rate pricing; • Validating parking only for invited guests; • Not providing employee parking and transportation allowances; and • Educating employees about available alternatives.
Implement Employee Parking “Cash-Out”
<i>Transit System Improvements</i>
<p>Transit System Improvements, including:</p> <ul style="list-style-type: none"> • Grade-separated right-of-way, including bus only lanes (for buses, emergency vehicles, and sometimes taxis), and other Transit Priority measures. Some systems use guideways which automatically steer the bus on portions of the route. • Frequent, high-capacity service • High-quality vehicles that are easy to board, quiet, clean, and comfortable to ride. • Pre-paid fare collection to minimize boarding delays. • Integrated fare systems, allowing free or discounted transfers between routes and modes. • Convenient user information and marketing programs. • High quality bus stations with Transit Oriented Development in nearby areas. • Modal integration, with BRT service coordinated with walking and cycling facilities, taxi services, intercity bus, rail transit, and other transportation services.
<p>Implement Transit Access Improvements, such as:</p> <ul style="list-style-type: none"> • Sidewalk/crosswalk safety enhancements • Bus shelter improvements
Expand Transit Network
Increase Transit Service Frequency/Speed

Provide Local Shuttles
Road Pricing/Management
Implement Area or Cordon Pricing
Improve Traffic Flow, such as: <ul style="list-style-type: none"> • Signalization improvements to reduce delay; • Incident management to increase response time to breakdowns and collisions; • Intelligent Transportation Systems (ITS) to provide real-time information regarding road conditions and directions; and • Speed management to reduce high free-flow speeds.
Required Project Contributions to Transportation Infrastructure Improvement Projects
Install Park-and-Ride Lots
Vehicles
Electrify Loading Docs and/or Require Idling-Reduction Systems
Utilize Alternative Fueled Vehicles, such as: <ul style="list-style-type: none"> • Biodiesel (B20) • Liquefied Natural Gas (LNG) • Compressed Natural Gas (CNG)
Utilize Electric or Hybrid Vehicles
Measures – Water
Water Supply
Use Reclaimed Water
Use Gray Water
Use Locally Sourced Water Supply
Water Use
Install Low-Flow Water Fixtures
Adopt a Water Conservation strategy
Design Water-Efficient Landscapes (see California Department of Water Resources Model Water Efficient Landscape Ordinance), such as: <ul style="list-style-type: none"> • Reducing lawn sizes; • Planting vegetation with minimal water needs, such as native species; • Choosing vegetation appropriate for the climate of the project site; • Choosing complimentary plants with similar water needs or which can provide each other with shade and/or water.
Use Water-Efficient Landscape Irrigation Systems (“Smart” irrigation control systems)
Reduce Turf in Landscapes and Lawns
Plant Native or Drought-Resistant Trees and Vegetation
Measures – Area Landscaping
Landscaping Equipment

Prohibit Gas Powered Landscape Equipment
Implement Lawnmower Exchange Program
Electric Yard Equipment Compatibility
Measures – Solid Waste
<i>Solid Waste</i>
Institute Recycling and Composting Services
Recycle Demolished Construction Material
Measures – Vegetation
<i>Vegetation</i>
Urban Tree Planting
Create New Vegetated Open Space
Measures – Construction
<i>Construction</i>
Use Alternative Fuels for Construction Equipment
Urban Tree Planting
Use Electric and Hybrid Construction Equipment
Limit Construction Equipment Idling Beyond Regulation Requirements
<p>Institute a Heavy-Duty Off-Road Vehicle Plan, including:</p> <ul style="list-style-type: none"> • Construction vehicle inventory tracking system; • Requiring hour meters on equipment; • Document the serial number, horsepower, manufacture age, fuel, etc. of all onsite equipment; and • Daily logging of the operating hours of the equipment.
Implement a Construction Vehicle Inventory Tracking System
Measures – Miscellaneous
<i>Miscellaneous</i>
<p>Establish a Carbon Sequestration Project, such as:</p> <ul style="list-style-type: none"> • Geologic sequestration or carbon capture and storage techniques, in which CO₂ from point sources is captured and injected underground; • Terrestrial sequestration in which ecosystems are established or preserved to serve as CO₂ sinks; • Novel techniques involving advanced chemical or biological pathways; or • Technologies yet to be discovered.
Establish Off-Site Mitigation
Use Local and Sustainable Building Materials
<p>Require Environmentally Responsible Purchasing, such as:</p> <ul style="list-style-type: none"> • Purchasing products with sustainable packaging; • Purchasing post-consumer recycled copier paper, paper towels, and stationary; • Purchasing and stocking communal kitchens with reusable dishes and utensils; • Choosing sustainable cleaning supplies;

- Leasing equipment from manufacturers who will recycle the components at their end of life;
- Choosing ENERGY STAR appliances and Water Sense-certified water fixtures;
- Choosing electronic appliances with built in sleep-mode timers;
- Purchasing ‘green power’ (e.g. electricity generated from renewable or hydropower) from the utility; and
- Choosing locally-made and distributed products.

Furthermore, in an effort to reduce the Project’s emissions, we identified several mitigation measures that are applicable to the proposed Project from NEDC’s *Diesel Emission Controls in Construction Projects*.⁵¹ Therefore, to reduce the Project’s emissions, consideration of the following measures should be made:

NEDC’s Diesel Emission Controls in Construction Projects⁵²	
Measures – Diesel Emission Control Technology	
a. Diesel Onroad Vehicles	All diesel nonroad vehicles on site for more than 10 total days must have either (1) engines that meet EPA onroad emissions standards or (2) emission control technology verified by EPA or CARB to reduce PM emissions by a minimum of 85%.
b. Diesel Generators	All diesel generators on site for more than 10 total days must be equipped with emission control technology verified by EPA or CARB to reduce PM emissions by a minimum of 85%.
c. Diesel Nonroad Construction Equipment	<ul style="list-style-type: none"> i. All nonroad diesel engines on site must be Tier 2 or higher. Tier 0 and Tier 1 engines are not allowed on site ii. All diesel nonroad construction equipment on site for more than 10 total days must have either (1) engines meeting EPA Tier 4 nonroad emission standards or (2) emission control technology verified by EPA or CARB for use with nonroad engines to reduce PM emissions by a minimum of 85% for engines 50hp and greater and by a minimum of 20% for engines less than 50hp.
d. Upon confirming that the diesel vehicle, construction equipment, or generator has either an engine meeting Tier 4 non road emission standards or emission control technology, as specified above, installed and functioning, the developer will issue a compliance sticker. All diesel vehicles, construction equipment, and generators on site shall display the compliance sticker in a visible, external location as designated by the developer.	
e. Emission control technology shall be operated, maintained, and serviced as recommended by the emission control technology manufacturer.	
Measures – Additional Diesel Requirements	
a. Construction shall not proceed until the contractor submits a certified list of all diesel vehicles, construction equipment, and generators to be used on site. The list shall include the following:	

⁵¹ “Diesel Emission Controls in Construction Projects.” Northeast Diesel Collaborative (NEDC), December 2010, available at: <https://www.epa.gov/sites/production/files/2015-09/documents/nedc-model-contract-sepcification.pdf>.

⁵² “Diesel Emission Controls in Construction Projects.” Northeast Diesel Collaborative (NEDC), December 2010, available at: <https://www.epa.gov/sites/production/files/2015-09/documents/nedc-model-contract-sepcification.pdf>.

<ul style="list-style-type: none"> i. Contractor and subcontractor name and address, plus contact person responsible for the vehicles or equipment. ii. Equipment type, equipment manufacturer, equipment serial number, engine manufacturer, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. iii. For the emission control technology installed: technology type, serial number, make, model, manufacturer, EPA/CARB verification number/level, and installation date and hour-meter reading on installation date.
<p>b. If the contractor subsequently needs to bring on site equipment not on the list, the contractor shall submit written notification within 24 hours that attests the equipment complies with all contract conditions and provide information.</p>
<p>c. All diesel equipment shall comply with all pertinent local, state, and federal regulations relative to exhaust emission controls and safety.</p>
<p>d. The contractor shall establish generator sites and truck-staging zones for vehicles waiting to load or unload material on site. Such zones shall be located where diesel emissions have the least impact on abutters, the general public, and especially sensitive receptors such as hospitals, schools, daycare facilities, elderly housing, and convalescent facilities.</p>
<p>Reporting</p>
<p>a. For each onroad diesel vehicle, nonroad construction equipment, or generator, the contractor shall submit to the developer's representative a report prior to bringing said equipment on site that includes:</p> <ul style="list-style-type: none"> i. Equipment type, equipment manufacturer, equipment serial number, engine manufacturer, engine model year, engine certification (Tier rating), horsepower, and engine serial number. ii. The type of emission control technology installed, serial number, make, model, manufacturer, and EPA/CARB verification number/level. iii. The Certification Statement signed and printed on the contractor's letterhead.
<p>b. The contractor shall submit to the developer's representative a monthly report that, for each onroad diesel vehicle, nonroad construction equipment, or generator onsite, includes:</p> <ul style="list-style-type: none"> i. Hour-meter readings on arrival on-site, the first and last day of every month, and on off-site date. ii. Any problems with the equipment or emission controls. iii. Certified copies of fuel deliveries for the time period that identify: <ul style="list-style-type: none"> 1. Source of supply 2. Quantity of fuel 3. Quality of fuel, including sulfur content (percent by weight)

These measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently, reduce emissions released during Project construction and operation. An EIR should be prepared to include all feasible mitigation measures, as well as include an updated health risk and GHG analysis to ensure that the necessary mitigation measures are implemented to reduce emissions to below thresholds. The EIR should also demonstrate a commitment to the implementation of these measures prior to Project approval, to ensure that the Project's significant emissions are reduced to the maximum extent possible.

Disclaimer

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of

care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Paul E. Rosenfeld, Ph.D.

Tel: (949) 887-9013
Email: mhagemann@swape.com

Matthew F. Hagemann, P.G., C.Hg., QSD, QSP

**Geologic and Hydrogeologic Characterization
Investigation and Remediation Strategies
Litigation Support and Testifying Expert
Industrial Stormwater Compliance
CEQA Review**

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.

B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certifications:

California Professional Geologist

California Certified Hydrogeologist

Qualified SWPPP Developer and Practitioner

Professional Experience:

Matt has 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. For the past 15 years, as a founding partner with SWAPE, Matt has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality and greenhouse gas emissions.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2014, 2017;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt’s responsibilities have included:

- Lead analyst and testifying expert in the review of over 300 environmental impact reports and negative declarations since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at more than 100 industrial facilities.
- Expert witness on numerous cases including, for example, MTBE litigation, air toxins at hazards at a school, CERCLA compliance in assessment and remediation, and industrial stormwater contamination.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.

With Komex H2O Science Inc., Matt’s duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted

public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nation-wide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9.

Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, *Oxygenates in Water: Critical Information and Research Needs*.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific

principles into the policy-making process.

- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt is currently a part time geology instructor at Golden West College in Huntington Beach, California where he taught from 2010 to 2014 and in 2017.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Colorado.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and **Hagemann, M.F.** 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukunaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examinations, 2009-2011.



Paul Rosenfeld, Ph.D.

Principal Environmental Chemist

Chemical Fate and Transport & Air Dispersion Modeling

Risk Assessment & Remediation Specialist

Education

Ph.D. Soil Chemistry, University of Washington, 1999. Dissertation on VOC filtration.

M.S. Environmental Science, U.C. Berkeley, 1995. Thesis on organic waste economics.

B.A. Environmental Studies, U.C. Santa Barbara, 1991. Thesis on wastewater treatment.

Professional Experience

Dr. Rosenfeld is the Co-Founder and Principal Environmental Chemist at Soil Water Air Protection Enterprise (SWAPE). His focus is the fate and transport of environmental contaminants, risk assessment, and ecological restoration. His project experience ranges from monitoring and modeling of pollution sources as they relate to human and ecological health. Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing, petroleum, MtBE and fuel oxygenates, chlorinated solvents, pesticides, radioactive waste, PCBs, PAHs, dioxins, furans, volatile organics, semi-volatile organics, perchlorate, heavy metals, asbestos, PFOA, unusual polymers, and odor. Significant projects performed by Dr. Rosenfeld include the following:

Litigation Support

Client: Missouri Department of Natural Resources (Jefferson City, Missouri)

Serving as an expert in evaluating air pollution and odor emissions from a Republic Landfill in St. Louis, Missouri. Conducted. Project manager overseeing daily, weekly and comprehensive sampling of odor and chemicals.

Client: Louisiana Department of Transportation and Development (Baton Rouge, Louisiana)

Serving as an expert witness, conducting groundwater modeling of an ethylene dichloride DNAPL and soluble plume resulting from spill caused by Conoco Phillips.

Client: Missouri Department of Natural Resources (St. Louis, Missouri)

Serving as a consulting expert and potential testifying expert regarding a landfill fire directly adjacent to another landfill containing radioactive waste. Implemented an air monitoring program testing for over 100 different compounds using approximately 12 different analytical methods.

Client: Baron & Budd, P.C. (Dallas, Texas) and Weitz & Luxenberg (New York, New York)

Served as a consulting expert in MTBE Federal Multi District Litigation (MDL) in New York. Consolidated ground water data, created maps for test cases, constructed damage model, evaluated taste and odor threshold levels. Resulted in a settlement of over \$440 million.

Client: The Buzbee Law Firm (Houston, Texas)

Served as a as an expert in ongoing litigation involving over 50,000+ plaintiffs who are seeking compensation for chemical exposure and reduction in property value resulting from chemicals released from the BP facility.

Client: Environmental Litigation Group (Birmingham, Alabama)

Serving as an expert on property damage, medical monitoring and toxic tort claims that have been filed on behalf of over 13,000 plaintiffs who were exposed to PCBs and dioxins/furans resulting from emissions from Monsanto and Cerro Copper's operations in Sauget, Illinois. Developed AERMOD models to demonstrate plaintiff's exposure.

Client: Baron & Budd P.C. (Dallas Texas) and Korein Tillery (St. Louis, Missouri)

Served as a consulting expert for a Class Action defective product claim filed in Madison County, Illinois against Syngenta and five other manufacturers for atrazine. Evaluated health issues associated with atrazine and determined treatment cost for filtration of public drinking water supplies. Resulted in \$105 million dollar settlement.

Client: The Buzbee Law Firm (Houston, Texas)

Served as a consulting expert in catalyst release and refinery emissions cases against the BP Refinery in Texas City. A jury verdict for 10 employees exposed to catalyst via BP's irresponsible behavior.

Client: Baron & Budd, P.C. (Dallas, Texas)

Served as a consulting expert to calculate the Maximum Allowable Dose Level (MADL) and No Significant Risk Level (NSRL), based on Cal EPA and OEHHA guidelines, for Polychlorinated Biphenyls (PCBs) in fish oil dietary supplements.

Client: Girardi Keese (Los Angeles, California)

Served as an expert testifying on hydrocarbon exposure of a woman who worked on a fuel barge operated by Chevron. Demonstrated that the plaintiff was exposed to excessive amounts of benzene.

Client: Mason & Cawood (Annapolis, Maryland) and Girardi & Keese (Los Angeles, California)

Serving as an expert consultant on the Battlefield Golf Club fly ash disposal site in Chesapeake, VA, where arsenic, other metals and radionuclides are leaching into groundwater, and ash is blowing off-site onto the surrounding communities.

Client: California Earth Mineral Corporation (Culver City, California)

Evaluating the montmorillonite clay deposit located near El Centro, California. Working as a Defense Expert representing an individual who owns a 2,500 acre parcel that will potentially be seized by the United States Navy via eminent domain.

Client: Matthews & Associates (Houston, Texas)

Serving as an expert witness, preparing air model demonstrating residential exposure via emissions from fracking in natural gas wells in Duncan, Texas.

Client: Baron & Budd P.C. (Dallas, Texas) and Korein Tillery (St. Louis, Missouri)

Served as a consulting expert for analysis of private wells relating to litigation regarding compensation of private well owners for MTBE testing. Coordinated data acquisition and GIS analysis evaluating private well proximity to leaking underground storage tanks.

Client: Lurie & Park LLP (Los Angeles, California)

Served as an expert witness evaluating a vapor intrusion toxic tort case that resulted in a settlement. The Superfund site is a 4 ½ mile groundwater plume of chlorinated solvents in Whittier, California.

Client: Mason & Cawood (Annapolis, Maryland)

Evaluated data from the Hess Gasoline Station in northern Baltimore, Maryland that had a release resulting in flooding of plaintiff's homes with gasoline-contaminated water, foul odor, and biofilm growth.

Client: The Buzbee Law Firm (Houston, Texas)

Evaluated air quality resulting from grain processing emissions in Muscatine, Iowa.

Client: Anderson Kill & Olick, P.C. (Ventura, California)

Evaluated historical exposure and lateral and vertical extent of contamination resulting from a ~150 million gallon Exxon Mobil tank farm located near Watts, California.

Client: Packard Law Firm (Petaluma, California)

Served as an expert witness, evaluated lead in Proposition 65 Case where various products were found to have elevated lead levels.

Client: The Buzbee Law Firm (Houston, Texas)

Evaluated data resulting from an oil spill in Port Arthur, Texas.

Client: Nexsen Pruet, LLC (Charleston, South Carolina)

Serving as expert in chlorine exposure in a railroad tank car accident where approximately 120,000 pounds of chlorine were released.

Client: Girardi & Keese (Los Angeles, California)

Serving as an expert investigating hydrocarbon exposure and property damage for ~600 individuals and ~280 properties in Carson, California where homes were constructed above a large tank farm formerly owned by Shell.

Client: Brent Coon Law Firm (Cleveland, Ohio)

Served as an expert, calculating an environmental exposure to benzene, PAHs, and VOCs from a Chevron Refinery in Hooven, Ohio. Conducted AERMOD modeling to determine cumulative dose.

Client: Lundy Davis (Lake Charles, Louisiana)

Served as consulting expert on an oil field case representing the lease holder of a contaminated oil field. Conducted field work evaluating oil field contamination in Sulphur, Louisiana. Property is owned by Conoco Phillips, but leased by Yellow Rock, a small oil firm.

Client: Cox Cox Filo (Lake Charles, Louisiana)

Served as testifying expert on a multimillion gallon oil spill in Lake Charles which occurred on June 19, 2006, resulting in hydrocarbon vapor exposure to hundreds of workers and residents. Prepared air model and calculated exposure concentration. Demonstrated that petroleum odor alone can result in significant health harms.

Client: Cotchett Pitre & McCarthy (San Francisco, California)

Served as testifying expert representing homeowners who unknowingly purchased homes built on an old oil field in Santa Maria, California. Properties have high concentrations of petroleum hydrocarbons in subsurface soils resulting in diminished property value.

Client: Law Offices Of Anthony Liberatore P.C. (Los Angeles, California)

Served as testifying expert representing individuals who rented homes on the Inglewood Oil Field in California. Plaintiffs were exposed to hydrocarbon contaminated water and air, and experienced health harms associated with the petroleum exposure.

Client: Orange County District Attorney (Orange County, California)

Coordinated a review of 143 ARCO gas stations in Orange County to assist the District Attorney's prosecution of CCR Title 23 and California Health and Safety Code violators.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as a testifying expert in a health effects case against ABC Coke/Drummond Company for polluting a community with PAHs, benzene, particulate matter, heavy metals, and coke oven emissions. Created air dispersion models and conducted attic dust sampling, exposure modeling, and risk assessment for plaintiffs.

Client: Masry & Vitatoe (Westlake Village, California), Engstrom Lipscomb Lack (Los Angeles, California) and Baron & Budd P.C. (Dallas, Texas)

Served as a consulting expert in Proposition 65 lawsuit filed against major oil companies for benzene and toluene releases from gas stations and refineries resulting in contaminated groundwater. Settlement included over \$110 million dollars in injunctive relief.

Client: Tommy Franks Law Firm (Austin, Texas)

Served as expert evaluating groundwater contamination which resulted from the hazardous waste injection program and negligent actions of Morton Thiokol and Rohm and Haas. Evaluated drinking water contamination and community exposure.

Client: Baron & Budd P.C. (Dallas, Texas) and Sher Leff (San Francisco, California)

Served as consulting expert for several California cities that filed defective product cases against Dow Chemical and Shell for 1,2,3-trichloropropane groundwater contamination. Generated maps showing capture zones of impacted wells for various municipalities.

Client: Weitz & Luxenberg (New York, New York)

Served as expert on Property Damage and Nuisance claims resulting from emissions from the Countywide Landfill in Ohio. The landfill had an exothermic reaction or fire resulting from aluminum dross dumping, and the EPA fined the landfill \$10,000,000 dollars.

Client: Baron & Budd P.C. (Dallas, Texas)

Served as a consulting expert for a groundwater contamination case in Pensacola, Florida where fluorinated compounds contaminated wells operated by Escambia County.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as an expert on groundwater case where Exxon Mobil and Helena Chemical released ethylene dichloride into groundwater resulting in a large plume. Prepared report on the appropriate treatment technology and cost, and flaws with the proposed on-site remediation.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as an expert on air emissions released when a Bartlo Packaging Incorporated facility in West Helena, Arkansas exploded resulting in community exposure to pesticides and smoke from combustion of pesticides.

Client: Omara & Padilla (San Diego, California)

Served as a testifying expert on nuisance case against Nutro Dogfood Company that constructed a large dog food processing facility in the middle of a residential community in Victorville, California with no odor control devices. The facility has undergone significant modifications, including installation of a regenerative thermal oxidizer.

Client: Environmental Litigation Group (Birmingham, Alabama)

Serving as an expert on property damage and medical monitoring claims that have been filed against International Paper resulting from chemical emissions from facilities located in Bastrop, Louisiana; Prattville, Alabama; and Georgetown, South Carolina.

Client: Estep and Shafer L.C. (Kingwood, West Virginia)

Served as expert calculating acid emissions doses to residents resulting from coal-fired power plant emissions in West Virginia using various air models.

Client: Watts Law Firm (Austin, Texas), Woodfill & Pressler (Houston, Texas) and Woska & Associates (Oklahoma City, Oklahoma)

Served as testifying expert on community and worker exposure to CCA, creosote, PAHs, and dioxins/furans from a BNSF and Koppers Facility in Somerville, Texas. Conducted field sampling, risk assessment, dose assessment and air modeling to quantify exposure to workers and community members.

Client: Environmental Litigation Group (Birmingham, Alabama)

Served as expert regarding community exposure to CCA, creosote, PAHs, and dioxins/furans from a Louisiana Pacific wood treatment facility in Florala, Alabama. Conducted blood sampling and environmental sampling to determine environmental exposure to dioxins/furans and PAHs.

Client: Sanders Law Firm (Colorado Springs, Colorado) and Vamvoras & Schwartzberg (Lake Charles, Louisiana)

Served as an expert calculating chemical exposure to over 500 workers from large ethylene dichloride spill in Lake Charles, Louisiana at the Conoco Phillips Refinery.

Client: Baron & Budd P.C. (Dallas, Texas)

Served as consulting expert in a defective product lawsuit against Dow Agroscience focusing on Clopyralid, a recalcitrant herbicide that damaged numerous compost facilities across the United States.

Client: Sullivan Papain Block McGrath & Cannavo (New York, New York) and The Cochran Firm (Dothan, Mississippi)

Served as an expert regarding community exposure to metals, PAHs PCBs, and dioxins/furans from the burning of Ford paint sludge and municipal solid waste in Ringwood, New Jersey.

Client: Rose, Klein & Marias LLP (Los Angeles, California)

Served as an expert in 55 Proposition 65 cases against individual facilities in the Port of Los Angeles and Port of Long Beach. Prepared air dispersion and risk models to demonstrate that each facility emits diesel particulate matter that results in risks exceeding 1/100,000, hence violating the Proposition 65 Statute.

Client: Rose, Klein & Marias LLP (Los Angeles, California) and Environmental Law Foundation (San Francisco, California)

Served as an expert in a Proposition 65 case against potato chip manufacturers. Conducted an analysis of several brands of potato chips for acrylamide concentrations and found that all samples exceeded Proposition 65 No Significant Risk Levels.

Client: Gonzales & Robinson (Westlake Village, California)

Served as a testifying expert in a toxic tort case against Chevron (Ortho) for allowing a community to be contaminated with lead arsenate pesticide. Created air dispersion and soil vadose zone transport models, and evaluated bioaccumulation of lead arsenate in food.

Client: Environment Now (Santa Monica, California)

Served as expert for Environment Now to convince the State of California to file a nuisance claim against automobile manufactures to recover MediCal damages from expenditures on asthma-related health care costs.

Client: Trutanich Michell (Long Beach, California)

Served as expert representing San Pedro Boat Works in the Port of Los Angeles. Prepared air dispersion, particulate air dispersion, and storm water discharge models to demonstrate that Kaiser Bulk Loading is responsible for copper concentrate accumulating in the bay sediment.

Client: Azurix of North America (Fort Myers, Florida)

Provided expert opinions, reports and research pertaining to a proposed County Ordinance requiring biosolids applicators to measure VOC and odor concentrations at application sites' boundaries.

Client: MCP Polyurethane (Pittsburg, Kansas)

Provided expert opinions and reports regarding metal-laden landfill runoff that damaged a running track by causing the reversion of the polyurethane due to its catalytic properties.

Risk Assessment And Air Modeling

Client: Hager, Dewick & Zuengler, S.C. (Green Bay, Wisconsin)

Conducted odor audit of rendering facility in Green Bay, Wisconsin.

Client: ABT-Haskell (San Bernardino, California)

Prepared air dispersion model for a proposed state-of-the-art enclosed compost facility. Prepared a traffic analysis and developed odor detection limits to predict 1, 8, and 24-hour off-site concentrations of sulfur, ammonia, and amine.

Client: Jefferson PRP Group (Los Angeles, California)

Evaluated exposure pathways for chlorinated solvents and hexavalent chromium for human health risk assessment of Los Angeles Academy (formerly Jefferson New Middle School) operated by Los Angeles Unified School District.

Client: Covanta (Susanville, California)

Prepared human health risk assessment for Covanta Energy focusing on agricultural worker exposure to caustic fertilizer.

Client: CIWMB (Sacramento, California)

Used dispersion models to estimate traveling distance and VOC concentrations downwind from a composting facility for the California Integrated Waste Management Board.

Client: Carboquimeca (Bogotá, Columbia)

Evaluated exposure pathways for human health risk assessment for a confidential client focusing on significant concentrations of arsenic and chlorinated solvents present in groundwater used for drinking water.

Client: Navy Base Realignment and Closure Team (Treasure Island, California)

Used Johnson-Ettinger model to estimate indoor air PCB concentrations and compared estimated values with empirical data collected in homes.

Client: San Diego State University (San Diego, California)

Measured CO₂ flux from soils amended with different quantities of biosolids compost at Camp Pendleton to determine CO₂ credit values for coastal sage under fertilized and non-fertilized conditions.

Client: Navy Base Realignment and Closure Team (MCAS Tustin, California)

Evaluated cumulative risk of a multiple pathway scenario for a child resident and a construction worker. Evaluated exposure to air and soil via particulate and vapor inhalation, incidental soil ingestion, and dermal contact with soil.

Client: MCAS Miramar (San Diego, California)

Evaluated exposure pathways of metals in soil by comparing site data to background data. Risk assessment incorporated multiple pathway scenarios assuming child resident and construction worker particulate and vapor inhalation, soil ingestion, and dermal soil contact.

Client: Naval Weapons Station (Seal Beach, California)

Used a multiple pathway model to generate dust emission factors from automobiles driving on dirt roads. Calculated bioaccumulation of metals, PCBs, dioxin congeners and pesticides to estimate human and ecological risk.

Client: King County, Douglas County (Washington State)

Measured PM₁₀ and PM_{2.5} emissions from windblown soil treated with biosolids and a polyacrylamide polymer in Douglas County, Washington. Used Pilat Mark V impactor for measurement and compared data to EPA particulate regulations.

Client: King County (Seattle, Washington)

Created emission inventory for several compost and wastewater facilities comparing VOC, particulate, and fungi concentrations to NIOSH values estimating risk to workers and individuals at neighboring facilities.

Air Pollution Investigation and Remediation

Client: Republic Landfill (Santa Clarita, California)

Managed a field investigation of odor around a landfill during 30+ events. Used hedonic tone, butanol scale, dilution-to-threshold values, and odor character to evaluate odor sources and character and intensity.

Client: California Biomass (Victorville, California)

Managed a field investigation of odor around landfill during 9+ events. Used hedonic tone, butanol scale, dilution-to-threshold values, and odor character to evaluate odor sources, character and intensity.

Client: ABT-Haskell (Redlands, California)

Assisted in permitting a compost facility that will be completely enclosed with a complex scrubbing system using acid scrubbers, base scrubbers, biofilters, heat exchangers and chlorine to reduce VOC emissions by 99 percent.

Client: Synagro (Corona, California)

Designed and monitored 30-foot by 20-foot by 6-foot biofilter for VOC control at an industrial composting facility in Corona, California to reduce VOC emissions by 99 percent.

Client: Jeff Gage (Tacoma, Washington)

Conducted emission inventory at industrial compost facility using GC/MS analyses for VOCs. Evaluated effectiveness of VOC and odor control systems and estimated human health risk.

Client: Daishowa America (Port Angeles Mill, Washington)

Analyzed industrial paper sludge and ash for VOCs, heavy metals and nutrients to develop a land application program. Metals were compared to federal guidelines to determine maximum allowable land application rates.

Client: Jeff Gage (Puyallup, Washington)

Measured effectiveness of biofilters at composting facility and conducted EPA dispersion models to estimate traveling distance of odor and human health risk from exposure to volatile organics.

Surface Water, Groundwater, and Wastewater Investigation/Remediation

Client: Confidential (Downey, California)

Managed groundwater investigation to determine horizontal extent of 1,000 foot TCE plume associated with a metal finishing shop.

Client: Confidential (West Hollywood, California)

Designing soil vapor extraction system that is currently being installed for confidential client. Managing groundwater investigation to determine horizontal extent of TCE plume associated with dry cleaning.

Client: Synagro Technologies (Sacramento, California)

Managed groundwater investigation to determine if biosolids application impacted salinity and nutrient concentrations in groundwater.

Client: Navy Base Realignment and Closure Team (Treasure Island, California)

Assisted in the design and remediation of PCB, chlorinated solvent, hydrocarbon and lead contaminated groundwater and soil on Treasure Island. Negotiated screening levels with DTSC and Water Board. Assisted in the preparation of FSP/QAPP, RI/FS, and RAP documents and assisted in CEQA document preparation.

Client: Navy Base Realignment and Closure Team (MCAS Tustin, California)

Assisted in the design of groundwater monitoring systems for chlorinated solvents at Tustin MCAS. Contributed to the preparation of FS for groundwater treatment.

Client: Mission Cleaning Facility (Salinas, California)

Prepared a RAP and cost estimate for using an oxygen releasing compound (ORC) and molasses to oxidize diesel fuel in soil and groundwater at Mission Cleaning in Salinas.

Client: King County (Washington)

Established and monitored experimental plots at a US EPA Superfund Site in wetland and upland mine tailings contaminated with zinc and lead in Smelterville, Idaho. Used organic matter and pH adjustment for wetland remediation and erosion control.

Client: City of Redmond (Richmond, Washington)

Collected storm water from compost-amended and fertilized turf to measure nutrients in urban runoff. Evaluated effectiveness of organic matter-lined detention ponds on reduction of peak flow during storm events. Drafted compost amended landscape installation guidelines to promote storm water detention and nutrient runoff reduction.

Client: City of Seattle (Seattle, Washington)

Measured VOC emissions from Renton wastewater treatment plant in Washington. Ran GC/MS, dispersion models, and sensory panels to characterize, quantify, control and estimate risk from VOCs.

Client: Plumas County (Quincy, California)

Installed wetland to treat contaminated water containing 1% copper in an EPA Superfund site. Revegetated 10 acres of acidic and metal laden sand dunes resulting from hydraulic mining. Installed and monitored piezometers in wetland estimating metal loading.

Client: Adams Egg Farm (St. Kitts, West Indies)

Designed, constructed, and maintained 3 anaerobic digesters at Springfield Egg Farm, St. Kitts. Digesters treated chicken excrement before effluent discharged into sea. Chicken waste was converted into methane cooking gas.

Client: BLM (Kremmling, Colorado)

Collected water samples for monitoring program along upper stretch of the Colorado River. Rafted along river and protected water quality by digging and repairing latrines.

Soil Science and Restoration Projects

Client: Hefner, Stark & Marois, LLP (Sacramento, California)

Facilitated in assisting Hefner, Stark & Marois, LLP in working with the Regional Water Quality board to determine how to utilize Calcium Participate as a by-product of processing sugar beets.

Client: Kinder Morgan (San Diego County, California)

Designed and monitored the restoration of a 110-acre project on Camp Pendleton along a 26-mile pipeline. Managed crew of 20, planting coastal sage, riparian, wetland, native grassland, and marsh ecosystems. Negotiated with the CDFW concerning species planting list and success standards.

Client: NAVY BRAC (Orote Landfill, Guam)

Designed and monitored pilot landfill cap mimicking limestone forest. Measured different species' root-penetration into landfill cap. Plants were used to evapotranspire water, reducing water leaching through soil profile.

Client: LA Sanitation District Puente Hills Landfill (Whittier, California)

Monitored success of upland and wetland mitigation at Puente Hills Landfill operated by Sanitation Districts of Los Angeles. Negotiated with the Army Corps of Engineers and CDFG to obtain an early sign-off.

Client: City of Escondido (Escondido, California)

Designed, managed, installed, and monitored a 20-acre coastal sage scrub restoration project at Kit Carson Park, Escondido, California.

Client: Home Depot (Encinitas, California)

Designed, managed, installed and monitored a 15-acre coastal sage scrub and wetland restoration project at Home Depot in Encinitas, California.

Client: Alvarado Water Filtration Plant (San Diego, California)

Planned, installed and monitored 2-acre riparian and coastal sage scrub mitigation in San Diego California.

Client: Monsanto and James River Corporation (Clatskanie, Oregon)

Served as a soil scientist on a 50,000-acre hybrid poplar farm. Worked on genetically engineering study of Poplar trees to see if glyphosate resistant poplar clones were economically viable.

Client: World Wildlife Fund (St. Kitts, West Indies)

Managed 2-year biodiversity study, quantifying and qualifying the various flora and fauna in St. Kitts' expanding volcanic rainforest. Collaborated with skilled botanists, ornithologists and herpetologists.

Publications

Chen, J. A., Zapata, A R., Sutherland, A. J., Molmen, D. R., Chow, B. S., Wu, L. E., **Rosenfeld, P. E.**, Hesse, R. C., (2012) Sulfur Dioxide and Volatile Organic Compound Exposure To A Community In Texas City Texas Evaluated Using Aermol and Empirical Data. American Journal of Environmental Science, 2012, 8 (6), 622-632

Rosenfeld, P.E. & Feng, L. (2011). *The Risks of Hazardous Waste*, Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2011). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Agrochemical Industry*, Amsterdam: Elsevier Publishing.

Gonzalez, J., Feng, L., Sutherland, A., Waller, C., Sok, H., Hesse, R., **Rosenfeld, P.** (2011). PCBs and Dioxins/Furans in Attic Dust Collected Near Former PCB Production and Secondary Copper Facilities in Sauget, IL. *Procedia Environmental Sciences* 4(2011):113-125.

Feng, L., Wu, C., Tam, L., Sutherland, A.J., Clark, J.J., **Rosenfeld, P.E.**, (2010). Dioxin and Furan Blood Lipid and Attic Dust Concentrations in Populations Living Near Four Wood Treatment Facilities in the United States. *Journal of Environmental Health* 73(6):34-46.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2010). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Wood and Paper Industries*, Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2009). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Petroleum Industry*, Amsterdam: Elsevier Publishing.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P.** (2009). 'Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States', in Brebbia, C.A. and Popov, V., eds., *Air Pollution XVII: Proceedings of the Seventeenth International Conference on Modelling, Monitoring and Management of Air Pollution*, Tallinn, Estonia. 20-22 July, 2009, Southampton, Boston. WIT Press.

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. A. Scott, J. J. J. Clark, **P. E. Rosenfeld** (2007) "Attic Dust and Human Blood Samples Collected near a Former Wood Treatment Facility" *Environmental Research*. 105, pp 194-197.

Rosenfeld, P.E., J. J. J. Clark, A. R. Hensley, M. Suffet. (2007) "The Use of an Odor Wheel Classification for Evaluation of Human Health Risk Criteria for Compost Facilities" –*Water Science & Technology* 55(5): 345-357.

Rosenfeld, P. E., M. Suffet. (2007) "The Anatomy Of Odour Wheels For Odours Of Drinking Water, Wastewater, Compost And The Urban Environment " *Water Science & Technology* 55(5): 335-344.

Sullivan, P. J. Clark, J.J.J., Agardy, F. J., **Rosenfeld, P.E.**, (2007) "Toxic Legacy, Synthetic Toxins in the Food, Water, and Air in American Cities," Elsevier Publishing, Boston Massachusetts.

Rosenfeld P.E., and Suffet, I.H. (Mel) (2007) "Anatomy Of An Odor Wheel" *Water Science and Technology*, In Press.

Rosenfeld, P.E., Clark, J.J.J., Hensley A.R., Suffet, I.H. (Mel) (2007) "The use of an odor wheel classification for evaluation of human health risk criteria for compost facilities." *Water Science And Technology*, In Press.

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., and Suffet I.H. (2004) "Control of Compost Odor Using High Carbon Wood Ash", Water Science and Technology, Vol. 49, No. 9. pp. 171-178.

Rosenfeld, P.E., Clark J. J. and Suffet, I.H. (2004) "Value of and Urban Odor Wheel." (2004). WEFTEC 2004. New Orleans, October 2 - 6, 2004.

Rosenfeld, P.E., and Suffet, I.H. (2004) "Understanding Odorants Associated With Compost, Biomass Facilities, and the Land Application of Biosolids" Water Science and Technology. Vol. 49, No. 9. pp 193-199.

Rosenfeld, P.E., and Suffet I.H. (2004) "Control of Compost Odor Using High Carbon Wood Ash", Water Science and Technology, Vol. 49, No. 9. pp. 171-178.

Rosenfeld, P. E., Grey, M. A., Sellew, P. (2004) Measurement of Biosolids Odor and Odorant Emissions from Windrows, Static Pile and Biofilter. Water Environment Research. 76 (4): 310-315 JUL-AUG 2004.

Rosenfeld, P. E., Grey, M., (2003) Two stage biofilter for biosolids composting odor control. Seventh International In Situ And On Site Bioremediation Symposium. Batelle Conference Orlando Florida. June 2 and June 6, 2003.

Rosenfeld, P.E., Grey, M and Suffet, M. 2002. "Controlling Odors Using High Carbon Wood Ash." Biocycle, March 2002, Page 42.

Rosenfeld, P.E., Grey, M and Suffet, M. (2002). "Compost Demonstration Project, Sacramento, California Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility Integrated Waste Management Board Public Affairs Office, Publications Clearinghouse (MS-6), Sacramento, CA Publication #442-02-008. April 2002.

Rosenfeld, P.E., and C.L. Henry. 2001. Characterization of odor emissions from three different biosolids. Water Soil and Air pollution. Vol. 127 Nos. 1-4, pp. 173-191.

Rosenfeld, P.E., and Henry C. L., 2000. Wood ash control of odor emissions from biosolids application. Journal of Environmental Quality. 29:1662-1668.

Rosenfeld, P.E., C.L. Henry and D. Bennett. 2001. Wastewater dewatering polymer affect on biosolids odor emissions and microbial activity. Water Environment Research. 73: 363-367.

Rosenfeld, P.E., and C.L. Henry. 2001. Activated Carbon and Wood Ash Sorption of Wastewater, Compost, and Biosolids Odorants Water Environment Research, 73: 388-392.

Rosenfeld, P.E., and Henry C. L., 2001. High carbon wood ash effect on biosolids microbial activity and odor. Water Environment Research. Volume 131 No. 1-4, pp. 247-262.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings. Bellevue Washington.

Chollack, T. and **P. Rosenfeld.** 1998. Compost Amendment Handbook For Landscaping. Prepared for and distributed by the City of Redmond, Washington State.

P. Rosenfeld. 1992. The Mount Liamuiga Crater Trail. Heritage Magazine of St. Kitts, Vol. 3 No. 2.

P. Rosenfeld. 1993. High School Biogas Project to Prevent Deforestation On St. Kitts. Biomass Users Network, Vol. 7, No. 1, 1993.

P. Rosenfeld. 1992. British West Indies, St. Kitts. Surf Report, April issue.

P. Rosenfeld. 1998. Characterization, Quantification, and Control of Odor Emissions From Biosolids Application To Forest Soil. Doctoral Thesis. University of Washington College of Forest Resources.

P. Rosenfeld. 1994. Potential Utilization of Small Diameter Trees On Sierra County Public Land. Masters thesis reprinted by the Sierra County Economic Council. Sierra County, California.

P. Rosenfeld. 1991. How to Build a Small Rural Anaerobic Digester & Uses Of Biogas In The First And Third World. Bachelors Thesis. University of California.

England Environmental Agency, 2002. Landfill Gas Control Technologies. Publishing Organization Environment Agency, Rio House, Waterside Drive, Aztec West, Almondsbury BRISTOL, BS32 4UD.

Presentations

Sok, H.L.; Waller, C.C.; Feng, L.; Gonzalez, J.; Sutherland, A.J.; Wisdom-Stack, T.; Sahai, R.K.; Hesse, R.C.; **Rosenfeld, P.E.** "Atrazine: A Persistent Pesticide in Urban Drinking Water." Urban Environmental Pollution, Boston, MA, June 20-23, 2010.

Feng, L.; Gonzalez, J.; Sok, H.L.; Sutherland, A.J.; Waller, C.C.; Wisdom-Stack, T.; Sahai, R.K.; La, M.; Hesse, R.C.; **Rosenfeld, P.E.** "Bringing Environmental Justice to East St. Louis, Illinois." Urban Environmental Pollution, Boston, MA, June 20-23, 2010.

Rosenfeld, P.E. (2009) "Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States" Presentation at the 2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting, April 19-23, 2009. Tuscon, AZ.

Rosenfeld, P.E. (2009) "Cost to Filter Atrazine Contamination from Drinking Water in the United States" Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States" Presentation at the 2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting, April 19-23, 2009. Tuscon, AZ.

Rosenfeld, P. E. (2007) "Moss Point Community Exposure To Contaminants From A Releasing Facility" Platform Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (2007) "The Repeated Trespass of Tritium-Contaminated Water Into A Surrounding Community Form Repeated Waste Spills From A Nuclear Power Plant" Platform Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (2007) "Somerville Community Exposure To Contaminants From Wood Treatment Facility Emissions" Poster Presentation at the 23rd Annual International Conferences on Soils Sediment and Water, October 15-18, 2007. University of Massachusetts, Amherst MA.

Rosenfeld P. E. "Production, Chemical Properties, Toxicology, & Treatment Case Studies of 1,2,3-Trichloropropane (TCP)" – Platform Presentation at the Association for Environmental Health and Sciences (AEHS) Annual Meeting, San Diego, CA, 3/2007.

Rosenfeld P. E. "Blood and Attic Sampling for Dioxin/Furan, PAH, and Metal Exposure in Florala, Alabama" – Platform Presentation at the AEHS Annual Meeting, San Diego, CA, 3/2007.

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." APHA 134 Annual Meeting & Exposition, Boston Massachusetts. November 4 to 8th, 2006.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PFOA and Related Chemicals.” Mealey’s C8/PFOA Science, Risk & Litigation Conference” October 24, 25. The Rittenhouse Hotel, Philadelphia.

Paul Rosenfeld Ph.D. “Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation PEMA Emerging Contaminant Conference. September 19. Hilton Hotel, Irvine California.

Paul Rosenfeld Ph.D. “Fate, Transport, Toxicity, And Persistence of 1,2,3-TCP.” PEMA Emerging Contaminant Conference. September 19. Hilton Hotel in Irvine, California.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PDBEs.” Mealey’s Groundwater Conference. September 26, 27. Ritz Carlton Hotel, Marina Del Ray, California.

Paul Rosenfeld Ph.D. “Fate, Transport and Persistence of PFOA and Related Chemicals.” International Society of Environmental Forensics: Focus On Emerging Contaminants. June 7,8. Sheraton Oceanfront Hotel, Virginia Beach, Virginia.

Paul Rosenfeld Ph.D. “Rate Transport, Persistence and Toxicology of PFOA and Related Perfluorochemicals”. 2005 National Groundwater Association Ground Water And Environmental Law Conference. July 21-22, 2005. Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld Ph.D. “Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation.” 2005 National Groundwater Association Ground Water And Environmental Law Conference. July 21-22, 2005. Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. and Rob Hesse R.G. Tert-butyl Alcohol Liability and Toxicology, A National Problem and Unquantified Liability. National Groundwater Association. Environmental Law Conference. May 5-6, 2004. Congress Plaza Hotel, Chicago Illinois.

Paul Rosenfeld, Ph.D., 2004. Perchlorate Toxicology. Presentation to a meeting of the American Groundwater Trust. March 7th, 2004. Pheonix Arizona.

Hagemann, M.F., **Paul Rosenfeld, Ph.D.** and Rob Hesse, 2004. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Paul Rosenfeld, Ph.D. A National Damage Assessment Model For PCE and Dry Cleaners. Drycleaner Symposium. California Ground Water Association. Radison Hotel, Sacramento, California. April 7, 2004.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. Understanding Historical Use, Chemical Properties, Toxicity and Regulatory Guidance of 1,4 Dioxane. National Groundwater Association. Southwest Focus Conference. Water Supply and Emerging Contaminants. February 20-21, 2003. Hyatt Regency Phoenix Arizona.

Paul Rosenfeld, Ph.D. Underground Storage Tank Litigation and Remediation. California CUPA Forum. Marriott Hotel. Anaheim California. February 6-7, 2003.

Paul Rosenfeld, Ph.D. Underground Storage Tank Litigation and Remediation. EPA Underground Storage Tank Roundtable. Sacramento California. October 23, 2002.

Rosenfeld, P.E. and Suffet, M. 2002. Understanding Odor from Compost, Wastewater and Industrial Processes. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association. Barcelona Spain. October 7- 10.

Rosenfeld, P.E. and Suffet, M. 2002. Using High Carbon Wood Ash to Control Compost Odor. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association. Barcelona Spain. October 7- 10.

Rosenfeld, P.E. and Grey, M. A. 2002. Biocycle Composting For Coastal Sage Restoration. Northwest Biosolids Management Association. Vancouver Washington. September 22-24.

Rosenfeld, P.E. and Grey, M. A. 2002. Soil Science Society Annual Conference. Indianapolis, Maryland. November 11-14.

Rosenfeld, P.E. 2000. Two stage biofilter for biosolids composting odor control. Water Environment Federation. Anaheim California. September 16, 2000.

Rosenfeld, P. E. 2000. Wood ash and biofilter control of compost odor. Biofest. October 16, 2000. Ocean Shores, California.

Rosenfeld, P. E. 2000. Bioremediation Using Organic Soil Amendments. California Resource Recovery Association. Sacramento California.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings. Bellevue Washington.

Rosenfeld, P.E., and C.L. Henry. 1999. An evaluation of ash incorporation with biosolids for odor reduction. Soil Science Society of America. Salt Lake City Utah.

Rosenfeld, P.E., C.L. Henry, R. Harrison. 1998. Comparison of Microbial Activity and Odor Emissions from Three Different Biosolids Applied to Forest Soil. Brown and Caldwell, Seattle Washington.

Rosenfeld, P.E., C.L. Henry. 1998. Characterization, Quantification, and Control of Odor Emissions from Biosolids Application To Forest Soil. Biofest Lake Chelan, Washington.

Rosenfeld, P.E., C.L. Henry, R. B. Harrison, and R. Dills. 1997. Comparison of Odor Emissions From Three Different Biosolids Applied to Forest Soil. Soil Science Society of America, Anaheim California.

Professional History

Soil Water Air Protection Enterprise (SWAPE); 2003 to present; Founding And Managing Partner
UCLA School of Public Health; 2007 to 2010; Lecturer (Asst Res)
UCLA School of Public Health; 2003 to 2006; Adjunct Professor
UCLA Environmental Science and Engineering Program; 2002-2004; Doctoral Intern Coordinator
UCLA Institute of the Environment, 2001-2002; Research Associate
Komex H₂O Science, 2001 to 2003; Senior Remediation Scientist
National Groundwater Association, 2002-2004; Lecturer
San Diego State University, 1999-2001; Adjunct Professor
Anteon Corp., San Diego, 2000-2001; Remediation Project Manager
Ogden (now Amec), San Diego, 2000-2000; Remediation Project Manager
Bechtel, San Diego, California, 1999 – 2000; Risk Assessor
King County, Seattle, 1996 – 1999; Scientist
James River Corp., Washington, 1995-96; Scientist
Big Creek Lumber, Davenport, California, 1995; Scientist
Plumas Corp., California and USFS, Tahoe 1993-1995; Scientist
Peace Corps and World Wildlife Fund, St. Kitts, West Indies, 1991-1993; Scientist
Bureau of Land Management, Kremmling Colorado 1990; Scientist

Teaching Experience

UCLA Department of Environmental Health (Summer 2003 through 2010) Taught Environmental Health Science 100 to students, including undergrad, medical doctors, public health professionals and nurses. Course focuses on the health effects of environmental contaminants.

National Ground Water Association, Successful Remediation Technologies. Custom Course In Sante Fe, New Mexico. May 21, 2002. Focused on fate and transport of fuel contaminants associated with underground storage tanks.

National Ground Water Association; Successful Remediation Technologies Course in Chicago Illinois. April 1, 2002. Focused on fate and transport of contaminants associated with Superfund and RCRA sites.

California Integrated Waste Management Board, April and May, 2001. Alternative Landfill Caps Seminar in San Diego, Ventura, and San Francisco. Focused on both prescriptive and innovative landfill cover design.

UCLA Department of Environmental Engineering, February 5 2002 Seminar on Successful Remediation Technologies focusing on Groundwater Remediation.

University Of Washington, Soil Science Program, Teaching Assistant for several courses including: Soil Chemistry, Organic Soil Amendments, and Soil Stability.

U.C. Berkeley, Environmental Science Program Teaching Assistant for Environmental Science 10.

Academic Grants Awarded

California Integrated Waste Management Board. \$41,000 grant awarded to UCLA Institute of the Environment. Goal: To investigate effect of high carbon wood ash on volatile organic emissions from compost. 2001.

Synagro Technologies, Corona California: \$10,000 grant awarded to San Diego State University. Goal: investigate effect of biosolids for restoration and remediation of degraded coastal sage soils. 2000.

King County, Department of Research and Technology, Washington State. \$100,000 grant awarded to University of Washington: Goal: To investigate odor emissions from biosolids application and the effect of polymers and ash on VOC emissions. 1998.

Northwest Biosolids Management Association, Washington State. \$20,000 grant awarded to investigate effect of polymers and ash on VOC emissions from biosolids. 1997.

James River Corporation, Oregon: \$10,000 grant was awarded to investigate the success of genetically engineered Poplar trees with resistance to round-up. 1996.

United State Forest Service, Tahoe National Forest: \$15,000 grant was awarded to investigating fire ecology of the Tahoe National Forest. 1995.

Kellogg Foundation, Washington D.C. \$500 grant was awarded to construct a large anaerobic digester on St. Kitts in West Indies. 1993.

Cases that Dr. Rosenfeld Provided Deposition or Trial Testimony

In the Court of Common Pleas of Tuscarawas County Ohio

John Michael Abicht, et al., *Plaintiffs*, vs. Republic Services, Inc., et al., *Defendants*

Case Number: 2008 CT 10 0741 (Cons. w/ 2009 CV 10 0987)

In the Court of Common Pleas for the Second Judicial Circuit, State of South Carolina, County of Aiken

David Anderson, et al., *Plaintiffs*, vs. Norfolk Southern Corporation, et al., *Defendants*.

Case Number: 2007-CP-02-1584

In the Circuit Court of Jefferson County Alabama

Jaeanette Moss Anthony, et al., *Plaintiffs*, vs. Drummond Company Inc., et al., *Defendants*

Civil action No. CV 2008-2076

In the Ninth Judicial District Court, Parish of Rapides, State of Louisiana

Roger Price, et al., *Plaintiffs*, vs. Roy O. Martin, L.P., et al., *Defendants*.

Civil Suit Number 224,041 Division G

In the United States District Court, Western District Lafayette Division

Ackle et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.

Case Number 2:07CV1052

In the United States District Court for the Southern District of Ohio

Carolyn Baker, et al., *Plaintiffs*, vs. Chevron Oil Company, et al., *Defendants*.

Case Number 1:05 CV 227

In the Fourth Judicial District Court, Parish of Calcasieu, State of Louisiana

Craig Steven Arabie, et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.

Case Number 07-2738 G

In the Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana

Leon B. Brydels, *Plaintiffs*, vs. Conoco, Inc., et al., *Defendants*.

Case Number 2004-6941 Division A

In the District Court of Tarrant County, Texas, 153rd Judicial District

Linda Faust, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, Witco Chemical Corporation A/K/A Witco Corporation, Solvents and Chemicals, Inc. and Koppers Industries, Inc., *Defendants*.

Case Number 153-212928-05

In the Superior Court of the State of California in and for the County of San Bernardino

Leroy Allen, et al., *Plaintiffs*, vs. Nutro Products, Inc., a California Corporation and DOES 1 to 100, inclusive, *Defendants*.

John Loney, Plaintiff, vs. James H. Didion, Sr.; Nutro Products, Inc.; DOES 1 through 20, inclusive, *Defendants*.

Case Number VCVVS044671

In the United States District Court for the Middle District of Alabama, Northern Division

James K. Benefield, et al., *Plaintiffs*, vs. International Paper Company, *Defendant*.

Civil Action Number 2:09-cv-232-WHA-TFM

In the Superior Court of the State of California in and for the County of Los Angeles

Leslie Hensley and Rick Hensley, *Plaintiffs*, vs. Peter T. Hoss, as trustee on behalf of the Cone Fee Trust; Plains Exploration & Production Company, a Delaware corporation; Rayne Water Conditioning, Inc., a California corporation; and DOES 1 through 100, *Defendants*.

Case Number SC094173

In the Superior Court of the State of California in and for the County of Santa Barbara, Santa Maria Branch
Clifford and Shirley Adelhelm, et al., all individually, *Plaintiffs*, vs. Unocal Corporation, a Delaware
Corporation; Union Oil Company of California, a California corporation; Chevron Corporation, a
California corporation; ConocoPhillips, a Texas corporation; Kerr-McGee Corporation, an Oklahoma
corporation; and DOES 1 through 100, *Defendants*.
Case Number 1229251 (Consolidated with case number 1231299)

In the United States District Court for Eastern District of Arkansas, Eastern District of Arkansas
Harry Stephens Farms, Inc. and Harry Stephens, individual and as managing partner of Stephens
Partnership, *Plaintiffs*, vs. Helena Chemical Company, and Exxon Mobil Corp., successor to Mobil
Chemical Co., *Defendants*.
Case Number 2:06-CV-00166 JMM (Consolidated with case number 4:07CV00278 JMM)

In the United States District Court for the Western District of Arkansas, Texarkana Division
Rhonda Brasel, et al., *Plaintiffs*, vs. Weyerhaeuser Company and DOES 1 through 100, *Defendants*.
Civil Action Number 07-4037

In The Superior Court of the State of California County of Santa Cruz
Constance Acevedo, et al. *Plaintiffs* Vs. California Spray Company, et al. *Defendants*
Case No CV 146344

In the District Court of Texas 21st Judicial District of Burleson County
Dennis Davis, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, *Defendant*.
Case Number 25,151

In the United States District Court of Southern District of Texas Galveston Division
Kyle Cannon, Eugene Donovan, Genaro Ramirez, Carol Sassler, and Harvey Walton, each Individually and
on behalf of those similarly situated, *Plaintiffs*, vs. BP Products North America, Inc., *Defendant*.
Case 3:10-cv-00622

ATTACHMENT B

MENLO SCIENTIFIC ACOUSTICS, INC.

Consultants in Acoustics and Communication Technologies

3 March 2021

Ms. Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, California 94080

Subject: **2053 – 2058 East 7th Street, Los Angeles Project**
ENV-2017-4735-MND and Appendix F - Noise Impact Review

Per Mr. Darien K. Key's request, Menlo Scientific Acoustics, Inc. (MSAI), reviewed the Mitigated Negative Declaration ENV-2017-4735-MND as well as Appendix F Noise Monitoring Data and Calculation Worksheets for the subject project. The discussion below provides a summary of our review. The items discussed below indicate some of the ways in which the MND and Appendix F does not adequately describe the project noise impacts, presents the impression the impacts are not significant, and omits potential noise sources and discussion of their impacts.

I. The Mitigated Negative Declaration Fails to Provide an Adequate Project Definition

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

- a. MND Part 4 Environmental Checklist Section XIII, page 136, asserts, that the project will have less than significant impact with mitigation incorporated for the "generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies." This is not supported by the incomplete analysis in the MND nor by the brief noise data presented in Appendix F.
- b. MND Fundamentals of Noise discussion, page 136, mentions noise disturbance levels that can disrupt sleep but does not address the operational impacts of the 4th level Hotel Roof Terrace Lounge, Hotel Green Roof Outdoor Eating, Hotel Café/Bar Garden Seating, Hotel Outdoor Gallery, or the Hotel Coffee/Bar. The MND also does not address the operational impacts of the bars on the 13th and 14th floors. There is no mention of what these activities may include, such as, but not limited to, live music, DJ's, foreground/background music, and patron noise for parties, nor does the MND attempt to quantify the increase in ambient noise levels that these activities will produce. These activities are likely to generate substantial increases in operational noise levels, and may generate even more substantial noise from boisterous patrons to these events since alcohol will be served.

MENLO SCIENTIFIC ACOUSTICS, INC.

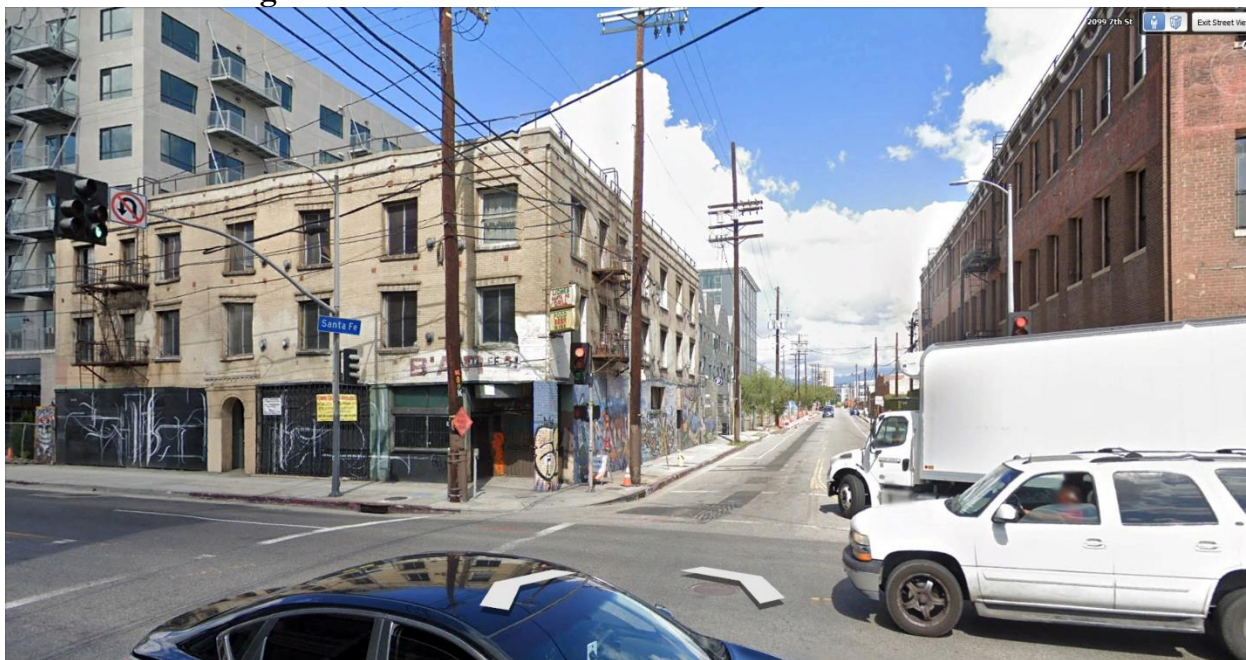
Live music levels can exceed 85 dBA for lounge type acts. For DJ's, pop bands, and cover bands the level can easily exceed 100 dBA. DJ and foreground music levels can also impact adjacent residential units.

The 4th level roof spaces are directly adjacent to the mid- to upper-levels of the Amp Lofts Building (1 - <10 feet) and directly across the street from both the Artis-in Residence Building 2101 E 7th Street (2 - ~50 feet), and the Ford Factory Building (3 - ~75 feet), as shown on MND Figure 3.3). The proximity of the proposed project 4th roof is shown in Figure 1, View to the NW Santa Fe and 7th Street. Based on the proximity of the 4th roof to the Project' outdoor dining and entertainment activities, and the increase in noise levels that Project activities are likely to produce, Project activities are likely to result in significant increases in ambient noise levels. No mitigation is proposed for these spaces or the operational impact from them.

As the MND notes, buildings can provide attenuation of noise from traffic. For the 4th, 13th, 14th, and tower roof, the ambient noise levels at the west side of the Project will be much lower during the evening and nighttime, and so activities at the Project outdoor areas can have significant impact.

Therefore, the MND's declaration of "no impact" is not supported. It is likely that the Project will result in significant, unmitigated operational noise impacts.

Figure 1 - View to the NW Santa Fe and 7th Street



Source: Google Maps

- c. The MND contains inadequate baseline data to establish existing ambient noise levels. The MND Ambient Noise Levels discussion, page 139, presents noise data from three locations, where the data was collected for just for 15 minutes at each location, on Thursday, April 4, 2019. The MND then proceeds to use this extremely limited data for

MENLO SCIENTIFIC ACOUSTICS, INC.

the determination that the construction activities at, on, and around the project site will have “Less Than Significant Impact With Mitigation Incorporated.”

The analysis and findings are not supported by the data:

- One 15-minute time period cannot accurately determine the ambient noise from 7 AM to 6 PM, which are the hours of construction per proposed Mitigation Measure MM-N-1 for this project. Ambient noise varies and is due to the traffic flow and construction activities at the time of the measurement, and therefore may not be “comparable to that during which the measurement is taken of the particular noise source being measured.” – City of Los Angeles Municipal Code Chapter XI Noise Regulation 111.01 (a)
- The temporary noise-attenuation sound barrier per Mitigation Measure MM-N-4 is not effective for sensitive receptors that are higher than 8’ above the ground or for sensitive receptors that have a direct view of the project site. The impacts on residential units above ground level in the neighboring buildings during the demolition and excavation/grading phases of the construction, despite a mitigation offered by an eight-foot-high barrier, is neither disclosed nor discussed. This impact is substantial, and requires additional mitigation.
- There was no discussion of whether haul trucks from construction projects in the vicinity were present which could increase the measured noise levels during the limited measurement periods.
- There was no discussion of the effect of the 6th Street Bridge closure on the general traffic counts during the limited measurement periods nor was there a discussion of the expected traffic counts once the bridge is again open and the lower noise due to these lower traffic counts.

- d. MND Haul Truck Noise discussion, page 147, incorrectly states the number of inbound and outbound trips per day – “approximately eight round trips per day (including four inbound and four outbound trips)”. A round trip includes one inbound trip and one outbound trip so the number of truck impacts is two per round trip - one incoming and one outgoing. As such, the number of trips per day for just the 2,500 cy of soil is ~358. Since there is one inbound and one outbound trip for each 14-cy capacity haul, there are 716 truck trips for the soil only or 16 haul truck in/out trips per day. There is no discussion or analysis for the 716 soil removal truck arrival/departure impacts. Now, assuming this debris will be hauled using roll-off containers and the ratio of heavy (concrete, etc.) using 10 cy containers to light-weight debris using 40 cy containers is 1:2 there will be an additional 88 round trips (176 in/out trips) for the 10-cy debris and an additional 176 round trips (352 in/out trips) for the 40 cy containers. There is no discussion or analysis for these 352 debris removal debris removal truck arrival/departure impacts.
- e. MND Haul Truck Noise discussion, page 147, says “It is assumed that haul truck trips would occur uniformly predominately outside peak hours.” There is no discussion of what are peak hours and how this would work in practice as it requires 1) the demolition/site clearing and grading be choreographed so that trucks will arrive during these phases when needed so that construction activities are not suspended to wait for a truck, and 2) construction activities for these phases are within the peak hours’ time frame. If it is possible for the haul truck timing to be scheduled to fall within the

MENLO SCIENTIFIC ACOUSTICS, INC.

(undefined) peak hours, the impact will be increased since the time between truck arrivals and departures will be reduced, and the arrival of one truck and the departure of another truck will overlap so the noise level will be higher, and the impact will increase.

- f. MND Haul Temporary Right-of Way Encroachment, page 44, says “Mitigation Measure MM-TR-1 requires preparation of a Construction Management Plan that shall be submitted to LADOT review and approval in accordance with the LAMC prior to the start of any construction work,” while the Haul Truck Noise discussion, page 147, says “A Haul Truck Route program would be described for the Proposed Project and approved by LADOT as part of the Construction Management Plan (refer to Mitigation Measure MM-TR-1). Since haul truck loading and unloading activities would occur on-site and/or within the boundaries of an approved traffic control plan and during the hours as required by the Noise Ordinance, the haul truck noise would be considered less than significant.” The determination that the impact “would be considered less than significant” is speculation and not supported by any quantitative analysis in the MND or any description of the haul plan. Nor is any mitigation in the plan presented for review since no plan has been developed, submitted, reviewed, or approved by the City or LDOT.

The MND does not disclose the type of equipment used for the construction of the building, although Appendix F lists some, but not all, equipment. Nor is there any analysis of the impact of same on the noise sensitive receivers in the Amp Lofts immediately adjacent to the project and less than the 50-foot reference for equipment noise. There is no discussion of possible mitigation needed for construction activities that will be in close proximity to the lower-, mid-, and upper levels of the Amp Lofts during the construction of the project tower or the construction of the additional floor and roof amenities of the existing three-story 14,910 square foot building on the project site. The MND notes that noise levels will increase as the distance between noise source and a receptor decreases. Most of the Project site is within 50 feet of the Amp Loft residence units. The MND analysis using a 50-foot reference for the noise level of construction equipment underestimates the impact from the construction equipment and so does not support the finding of Less Than Significant Impact. In fact, the impact from construction equipment will be significant even with mitigation (see Figure 2 and Table 1, below).

- g. The MND does not disclose any operational noise impacts from activities on the 4th floor roof, 13th floor outside space, or the Tower 15th floor roof. As discussed above, these impacts are likely to be significant, requiring mitigation.

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

Due to the deficiencies discussed in item I.c, above, it is necessary to establish an accurate existing baseline to estimate noise impacts as accurately as possible. The MND fails to provide an accurate description of existing noise conditions because it uses imprecise and inadequate methods to establish a baseline. Any analysis that follows is therefore flawed.

For example, MND Table 4.13, Estimated Exterior Construction Noise at Nearest Sensitive Receptors Without Mitigation, presents data from 15-minute mid-day noise measurements taken

MENLO SCIENTIFIC ACOUSTICS, INC.

at the Project site on one day. Absent from the MND or its analyses are details critical to support its conclusions regarding the existing baseline at the Project site. No description of the environmental conditions in the vicinity, such as the current or former presence of construction and other activities near the measurement locations or other environmental conditions such as wind that could affect the noise baseline measurements are disclosed. There is no statement to the effect “All equipment is under current calibration, copies of which are available on request” and so the accuracy of the measurements is open to question. Nor is the software used to process, analyze, and present the data disclosed.

Without this information, the City is unable to determine whether the increase in ambient noise levels caused by Project construction and operation would be significant, as called for by CEQA.

III. The MND’s Conclusions Regarding Construction Noise Impacts Are Inaccurate and Underestimated

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

Appendix F presents estimated construction noise levels at the adjacent and nearest sensitive receptor, the Amp Lofts (circle 1), shown in page 3 of 22 of Appendix F, is not accurate, for the Building and Architectural Coating phases since the distance from the project tower to the Amp Lofts building (receptor #1) is typically less than 50 feet. Based on MND Figure 3.6, it appears that over 75% of the project site area is 50 feet or less from the Amp Lofts as shown in the markup of MND Figure 3.6, shown in Figure 2, Project Distance to Amp Lofts – 50 Foot, below, which shows in red the only portions of the project that are 50 feet or more from the project property line and the Amp Lofts.

For distances less than 50 feet, the impact increases 6 dB for every halving of the distance, so for some distances less than 50 feet, the projected levels using the assumed construction noise levels presented in Appendix F are significant, especially as there is no mitigation above that provided by the proposed 8-foot-high barrier in mitigation measure MM-N-4. The projected levels at distances less than 50 feet are presented in Table 1 – Noise Levels at Amp Lofts for Activities Less Than 50 Feet, below, using the analysis for attenuation for distance presented in MND Section XIII Noise, Fundamentals of Noise, page 138.

MENLO SCIENTIFIC ACOUSTICS, INC.

Figure 2- Project Distance to Amp Lofts – 50 Foot

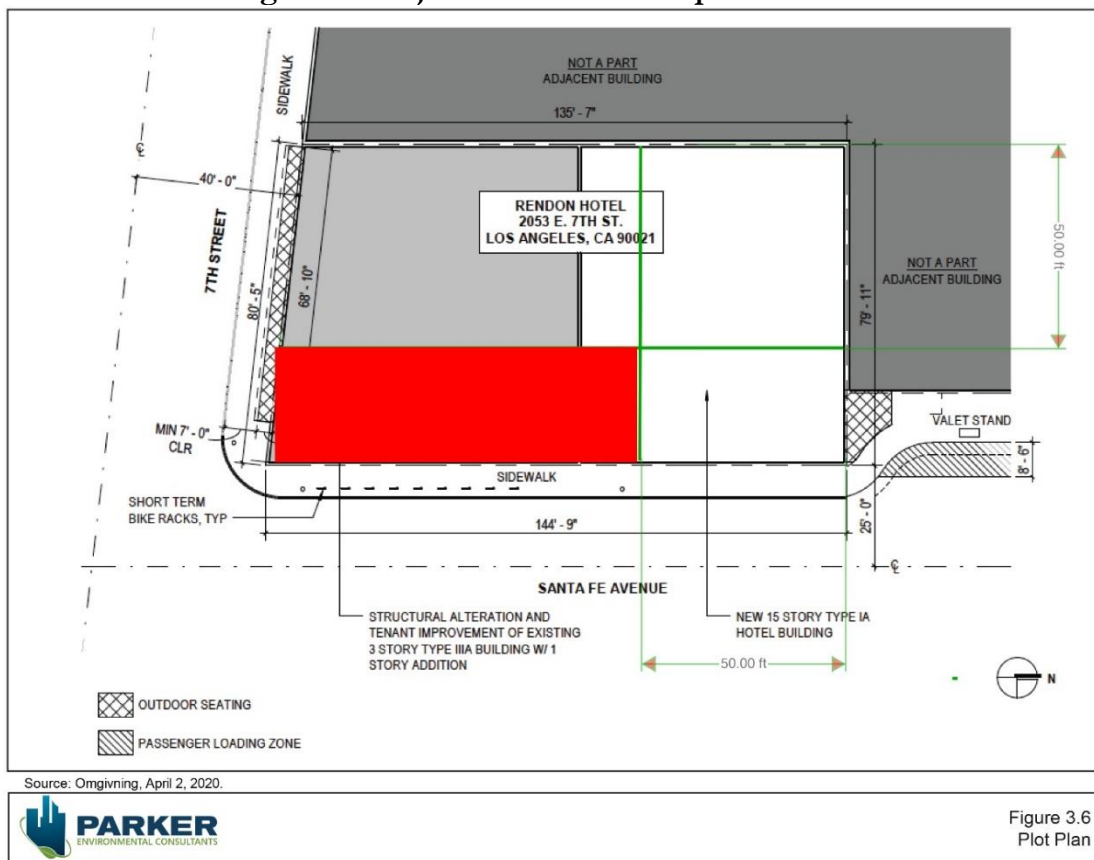


Table 1 – Noise Levels at Amp Lofts for Activities Less than 50 Feet

Phase	Construction Noise Level (dBA Leq) at 50' * ^c	Construction Noise Level (dBA Leq) at 25'	Construction Noise Level (dBA Leq) at 12.5'	Construction Noise Level (dBA Leq) at 6.25'
Demolition/Site Clearing	85.9	91.9	97.9	106.9
Grading	86.4	92.4	98.4	104.4
Building	82.3	88.3	94.3	100.3
Architectural Coating	81.4	87.4	93.4	99.4

* per Appendix F

If one assumes the construction noise significance criteria in MND Table 4.13 and Table 4.14 are correct (they can in fact be lower than stated in these Tables, as noted in section I.c, above), the levels in Table 1, above, in RED exceed the “Noise Impact Above 5-dBA Thresholds” noted in Table 4.13 and Table 4.14, and so these impacts are significant.

In addition, one notes that the MND presents projected noise levels only for the demolition and excavation/grading construction phases of the project, the deficiencies and defects of which are discussed in section I, above.

MENLO SCIENTIFIC ACOUSTICS, INC.

IV. Mitigation of Construction Noise is Inadequate and Operational Noise is Not Discussed nor Disclosed

The measures proposed by the MND to mitigate noise impacts are woefully inadequate and are ineffective. The MND notes that to mitigate adverse construction noise impacts at the Amp Lofts and other nearby residential properties, an eight-foot-high barrier will be installed along the western boundary of the Project site during demolition and excavation/grading. This barrier, which will be on grade, stands at a much lower height than any residential units in both buildings, will provide no mitigation to units 8 feet or more above grade. As such the impact of construction activities can be considered significant. A potential mitigation measure for reducing construction noise impacts is retrofitting windows at impacted existing residential properties, similar to that implemented at LAX.

Furthermore, and of more lasting impact, nowhere in the MND are impacts from operational aspects of the project, such as from music or loud (and potentially inebriated) patrons on the Hotel Roof Terrace Lounge, Hotel Green Roof Outdoor Eating, Hotel Café/Bar Garden Seating, Hotel Outdoor Gallery, or the Hotel Coffee/Bar on Amp Lofts units, discussed or disclosed. Music on the 4th Floor Roof spaces will cause significant impact on the Amp Loft units to the immediate west of these project spaces. e project 4th floor roof. There is no discussion of the events and activities that will occur on the 13th floor, or the Tower 15th floor Spa (pool), Spa Deck, Roof Garden, Roof Lounge, and Roof Viewing Terrace. As such the impact of these undisclosed activities can be considered significant.

Music, especially the low frequency sounds present in many music genres, can be a nuisance and impact residential units in close proximity. Music can impact the interior of the residences since windows do not have good low-frequency attenuation. Potential mitigation measures for reducing these impacts can include limiting music or sound levels, including not allowing music at the 4th floor roof and 15th floor spaces, as well as retrofitting windows at impacted existing residential properties, similar to that implemented at LAX. The City should prepare an EIR which discloses these impacts and consider adopting these mitigation measures to reduce potentially significant noise operational noise impacts.

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

Sincerely,
MENLO SCIENTIFIC ACOUSTICS, INC.



Neil A. Shaw, FASA, FAES

NAS:sk

RESUME - NEIL A. SHAW

Education: University of California, Los Angeles
B. S. Engineering, 1977, cum laude
M. S. Engineering, 1977

Cooper Union, New York, 1968 - 1970

Honors: Kenward S. Oliphant Memorial Fellowship in Acoustical Engineering (awarded by Consulting Engineers Association of California)
Tau Beta Pi

Experience: Menlo Scientific Acoustics, Inc., Topanga

Designer and manager for acoustic design projects including audio-visual systems, sound reinforcement systems, television and radio production systems, architectural room acoustics, electromagnetic compatibility system design and criteria development, electroacoustic and electronic signal processing equipment product performance criteria development, product design and development, environmental noise surveys and analysis, noise and vibrations control, sound isolation, and machine noise control.
1992 to present.
Principal.

University of Southern California, Thornton School of Music
2008 - 2010.

Southern California Institute of Architecture, Los Angeles
2003.

WEAL, Santa Monica

Design and construction services for sound reinforcement systems, television systems, A/V systems, paging systems, and masking noise systems for various production facilities, convention centers, airport terminals, auditoriums, places of worship, concert halls, athletic facilities, courtrooms, multipurpose rooms, gymnasiums, museums, banquet halls, lecture rooms and other facilities. Transportation ambient noise surveys and analysis, construction site noise measurements, and field STC and NIC measurements per ASTM E 336-84. Lead member of team to install, run and maintain database manager computer software for company projects and clients. Part of design, implementation and enhancement team for computer controlled laboratory data acquisition and processing for laboratory tests performed per ASTM E 90-85 and ASTM C 423-84a.
1975 to 1992.

Aero-acoustics Laboratory, UCLA

Responsibilities include computer programming, aero-acoustic measurements, acoustic measurements, database search and statistical processing, A/D anti-aliasing filter design and prototyping, multi-channel data acquisition and processing, post processing and display.
1978 to 1984.

Affiliations:

Fellow, Acoustical Society of America
Chairman, Los Angeles Chapter, 1991 to 2001.
Organizer and Co-Chair, Joint ASA/ASJ meeting 1996, Auralization Special Session.
Organizer and Chair, ASA meeting, 1997, Engineering Acoustics Special Session.
Organizer and Co-Chair, ASA meeting, 1999, Engineering Acoustics Special Session.
Organizer and Co-Chair, ASA meeting, 2000, Student Loudspeaker Design Competition.
Chairman, ASA meeting, 2001, Architectural Acoustics Modeling and Imaging Special Session.
Organizer and Chair, ASA meeting, 2001, Architectural Acoustics Cruise Ship Acoustics Special Session.
Tutorial on Architectural Acoustics, Joint ASA/ICA/MCA Cancun meeting, December 2002.
Invited Paper, November 2003 ASA meeting, "Sound Quality and Loudspeakers," Special Session on Sound Quality - When Sound is the Essential Quality.
Organizer and Co-Chair, ASA meeting, 2004, Special Session on the Bell Laboratories and Acoustics.
Invited Paper, June 2004 ASA meeting, "Textbooks on Acoustics," On the Occasion of His 90th Birthday, To Honor the Contributions of Leo L. Beranek to Acoustics and Teaching Special Session sponsored by all the Technical Committees and ASA Committees.
Chairman, June 2004 ASA meeting, General Topics in Architectural Acoustics
Invited Paper, June 2005 ASA meeting, "Barnum Hall - The Continuing Renovation of a Streamline Moderne Theater," Special Session on Preserving Acoustical Integrity in the Course of Renovation.
Invited Paper, Winter 2007 ASA meeting, "Sound Systems for Large Scale Venues," with John Monitto, Special session on Sound Systems in Large Rooms and Stadia
Member, Technical Committee on Architectural Acoustics, 1996 - 2010
Member, Technical Committee on Engineering Acoustics, 1998 - 2010
Member, Technical Committee on Physical Acoustics, 2000 - 2010
Member, Books+ Committee, 1996 - present

Fellow, Audio Engineering Society
Member, Technical Committee on Acoustics and Sound Reinforcement, 1988 to 2005.
Chairman, Large Array Systems Session and Special JAES issue, 1987
Chairman, Workshop on Auralization, 1993
Co-Chairman, Workshop on Weather-Related Issues in Outdoor Sound Reinforcement, 1998
Tutorial on Loudness, Los Angeles Chapter, March 2003

Senior Member, Institute of Electrical and Electronic Engineers

Member, Society of Motion Picture and Television Engineers
Member, Standards Community TC-20F Film, TC-20F-30 WG Film Audio, TC-20F-40 Theatrical Projection, ST-SG Theater B-chain
1990 to present.

Member, Institute of Noise Control Engineering

Licenses: Electrical Contractor's License, CA #342710
EIT, CA #37673

Publications: Preface to the Reprint Edition, "Principles and Applications of Room Acoustics", Lothar Cremer and Helmut A. Muller (translated by Theodore J. Shultz), Peninsula Publishers, Los Altos Hills, CA, reprint edition, to be re-published.

Patent reviews, Journal of the Acoustical Society of America, 2004 -present.

Shaw, Neil A, "Up in Knudsen's Attic: Some Private papers of Vern O. Knudsen," Acoustics Today, 7(1), 29ff, January 2011

Shaw, Neil A., "Seeing, Hearing & Listening - Part II", Live Sound International, 17(4), 58ff, April 2008

Shaw, Neil A., "Seeing, Hearing & Listening - Part I", Live Sound International, 17(3), 12ff, March 2008

Shaw, Neil A., "The Pre-history and Early History of Loudspeakers", part 4 of 4, Live Sound International, 16(8), 66ff, August 2007

Shaw, Neil A., "The Pre-history and Early History of Loudspeakers", part 3 of 4, Live Sound International, 16(7), 54ff, July 2007

Shaw, Neil A., "The Pre-history and Early History of Loudspeakers", part 2 of 4, Live Sound International, 15(12), 12ff, December 2006

Shaw, Neil A., "An Early History of Modern Power Amplifiers," Live Sound International, 15(2), 10ff, February 2006

Shaw, Neil A., "The Pre-history and Early History of Loudspeakers", part 1 of 4, Live Sound International, 14(4), 38ff, November 2005

"Audio" monthly column, Club System International magazine, 2000 - 2003.

Shaw, Neil A., "The Pre-History and Early History of Loudspeakers", Sound and Communications, 41(4), 118ff, April 1995.

Shaw, Neil A., "Acoustical Design and Auralization", Sound and Communications, 40(8), 44ff, August 1994.

Shaw, Neil A., Klapholz, Jesse and Gander, Mark R., "Books and Acoustics, Especially Wallace Clement Sabine's Collected Papers on Acoustics," Proceedings of the Sabine Centennial Symposium, Acoustical Society of America, Cambridge, MA, June 1994.

Shaw, Neil A., "Digital Delays, Part Three - Real World Applications for Real World Delay Units," Sound and Communications, 39(10), 16ff, October 1993.

Shaw, Neil A., "Digital Delays, Part Two - Testing Specific Products for Specific Uses," Sound and Communications, 39(5), 62ff, May 1993.

Shaw, Neil A., "Digital Delays, Part One - Reviewing the Basics," Sound and Communications, 393(4), 96ff, March 1993.

Meecham, W. C. and Shaw, Neil, "Increase in Disease Mortality Rates Due to Aircraft Noise", Proceedings of the International Symposium on Noise and Disease, Berlin, 1991

Meecham, W. C. and Shaw, Neil, "Increase in Disease Mortality Rates Due to Aircraft Noise," Proceedings of the 5th International Congress on Noise as a Public Health Problem, Stockholm, 351-356, 1988

Shaw, Neil A., "A Historical Profile: Stereophonic Sound Systems, Part Two," Sound and Communications, 33(7), 24ff, July 1987.

Shaw, Neil A., "A Historical Profile: Stereophonic Sound Systems, P a r t One," Sound and Communications, 33(6), 22ff, June 1987.

Shaw, Neil A., "Exhibit Hall and Theater Sound Reinforcement Systems at the Metro Toronto Convention Center," Proceedings 12th International Congress of Acoustics, E9-5.1 - E9-5.2, 1986.

Meecham, W. C. and N. A. Shaw, "Jet Plane Noise Effects on Mortality Rates," Proceedings Internoise 86 Progress in Noise Control, Volume II, 1451-1455, 1986.

Shaw, N. A., "Effects of Jet Noise on Mortality Rates," Los Angeles County Department of Health, The Effects of Aircraft Noise on Health, June, 1981

Meecham, W. C. and N. A. Shaw, "Effects of Jet Noise On Mortality Rates," British Journal of Audiology, 13, 77-80, 1979.

Book Reviews:

"Acoustical Engineering," Harry F. Olson - Journal of the Audio Engineering Society, Vol. 40, No. 5, May 1992, Sound and Communications, Vol. 38, No. 4, April 27, 1992.

"Concert Sound - Tours, Technologies and Techniques," David Trubitt - Journal of the Audio Engineering Society.

"Hearing - An Introduction to Psychological and Physiological Acoustics," Stanley A. Gelfand - Sound and Communications, Vol. 37, No. 3, March 22, 1991.

"Room Acoustics," Henrich Kuttruff - Sound and Communications, Vol. 38, No. 2, February 28, 1992.

"The Science of Sound," Thomas D. Rossing - Sound and Communications, Vol. 37, No. 10, October 22, 1991.

"AIP Handbook of Condenser Microphones," George S. K. Wong and Tony F. W. Embleton, Editors - Journal of the Audio Engineering Society, Vol. 43, No. 6, June 1995.

"The ASA Edition of Speech and Hearing in Communication", Harvey Fletcher - Sound and Communication, Vol. 41, No. 9, September 25, 1995.

"The Nature and Technology of Acoustic Space", Mikio Tohyama, Hideo Suzuki and Yoichi Ando - Journal of the Audio Engineering Society, Vol. 44, No. 3, March 1996.

"Concert and Opera Halls - How They Sound", Leo Beranek - Journal of the Audio Engineering Society, Vol. 44, No. 9, September 1996.

"Acoustics and Noise Control Handbook for Architects and Builders", Leland K. Irvine and Roy L. Richards - Journal of the Audio Engineering Society, Vol. 46, No. 5, May 1998.

"Encyclopedia of Acoustics", Edited by Malcolm J. Crocker - Journal of the Audio Engineering Society, Vol. 46, No. 9, September 1998.

"The New Stereo Soundbook, Ron Streicher and Alton Everest - Journal of the Acoustical Society of America, Vol. 105, No. 6, June 1999.

"Introduction to Electroacoustics and Audio Amplifier Design," W. Marshall Leach, Jr. - Journal of the Audio Engineering Society, Vol. 47, No. 7/8, July/August 1999, Sound and Communications, Vol. 45, No. 9, September 20, 1999.

"Architectural Acoustics - Principles and Design," Madan Mehta, Jim Johnson, and Jorge Rocafort - Journal of the Audio Engineering Society, Vol. 47, No. 10, October 1999.

"Architectural Acoustics: Blending Sound Sources, Sound Fields, and Listening," Yoichi Ando - Journal of the Audio Engineering Society, Vol. 48, No. 1/2, January/February 2000.

"Fundamental of Physical Acoustics," David T. Blackstock - Journal of the Audio Engineering Society, Vol. 48, No. 9, September 2000.

"The Science and Applications of Acoustics," Daniel R. Raichel - Journal of the Audio Engineering Society, Vol. 48, No. 10, October 2000.

"Sounds of Our Times," Robert T. Beyer - Journal of the Audio Engineering Society, Vol. 48, No. 11, November 2000.

"Acoustics: Basic Physics, Theory and Methods," Paul Filippi, Dominique Habalt, Jean-Pierre Lefebvre and Aime Bergassoli - Journal of the Audio Engineering Society, Vol. 49, No. 1+2, January/February 2001.

"Active Noise Control Primer," Scott D. Snyder - Journal of the Audio Engineering Society, Vol. 49, No. 5, May 2001.

"The Microphone Book," John Eargle - Sound & Communications, November 2001.

"Computer Speech Recognition, Compression, Synthesis," Manfred R. Schroeder - Journal of the Audio Engineering Society, Vol. 49, No. 12, December 2001.

"Audio Engineering For Sound Reinforcement," John Eargle and Chris Foreman - Journal of the Audio Engineering Society. Vol. 50, No. 12,

December 2002.

“Pro Audio Reference,” Dennis Bohn - Journal of the Audio Engineering Society, Vol. 51, No. 7/8, July/August 2003.

“Concert Halls and Opera Houses - Music, Acoustics, and Architecture,” Leo L. Beranek - Journal of the Audio Engineering Society, Vol. 52, No. 5, May 2004

“Acoustic Absorbers and Diffusers - Theory, Design and Application,” Trevor J. Cox and Peter D’Antonio - Journal of the Audio Engineering Society, Volume 53, No. 10, October 2005

“Formulas of Acoustics,” F. P. Mechel - Journal of the Audio Engineering Society, Volume 53, No. 12, December 2005

“Communication Acoustics,” Jens Blauert (editor) - Journal of the Audio Engineering Society, Volume 54, No. 1/2, January/February 2006

“Acoustics and Psychoacoustics,” David M. Howard and Jamie Angus - Journal of the Audio Engineering Society, Volume 54, No. 11, November 2006

“Pro Audio Reference,” Second Edition, Dennis Bohn, Journal of the Audio Engineering Society - Journal of the Audio Engineering Society, Volume 54, No. 4, April 2007

“Worship, Acoustics, and Architecture,” Ettore Cirillo and Francesco Martellotta - Journal of the Audio Engineering Society, Journal of the Audio Engineering Society, Volume 55, No. 11, November 2007

“Sound FX Unlocking the Creative Potential of Recording Studio Effects,” Alexander U. Case - Journal of the Audio Engineering Society, Volume 55, No. 12, December 2007

“Surround Sound Up and Running,” Tomlinson Holman - Journal of the Audio Engineering Society, Volume 56, No. 9, September 2008

“Sound Reproduction Loudspeakers and Rooms,” Floyd E. Toole - Journal of the Audio Engineering Society, Volume 57, No. 1/2, January/February 2009

“Handbook for Sound Engineers,” 4th Edition, Glenn Ballou - Journal of the Audio Engineering Society, Volume 57, No. 7/8, July/August 2009

“Acoustics and the Performance of Music Manual for Acousticians, Audio Engineers, Musicians, Architects and Musical Instrument Makers,” 5th Edition Jürgen Meyer (translated by Uwe Hanson) - Journal of the Audio Engineering Society, Volume 58, No. 3, March 2010

“Sound for Film and Television” 3rd Edition, Tomlinson Holman - Journal of the Audio Engineering Society, Volume 58, No. 11, November 2010

“The Acoustics of Performance Halls Spaces for Music from Carnegie Hall to the Hollywood Bowl,” J. Christopher Jaffe - Journal of the Audio Engineering Society, Volume 59, No. 4, April 2011

“Acoustics and Audio Technology,” Mendel Kleiner - Journal of the Audio Engineering Society, to be published

“Grounds for Grounding,” Elya B. Joffee and Kai-Sang Lock - Journal of the Audio Engineering Society, to be published

Selected Product Development Projects - Neil A. Shaw

Aura Systems	1992 - 2005 Technical support for audio projects using inherently shielded neodymium speakers.
Peavey	1995 - 1997 Loudspeaker engineering for professional woofers and compression drivers, out-sourcing of electronics and speaker manufacturing, joint venture liaison.
Armstrong World Industries	1999 - 2002 Conception and product definition for active acoustic initiative. Product definition and development of ceiling tile speaker, and other projects.
Microsoft	1999 - 2000 Headset and headset element design for voice recognition product.
Cisco	1999 - 2000 Telephone and speaker-phone design for Internet telephone.
Intel	2000 Internet appliance sound system product
RPG	2001 - 2020 Technical and marketing support for this vendor of acoustical devices for architectural spaces.
Bohlender-Graebener	2001 - 2004 Technical support and loudspeaker engineering for planar diaphragm loudspeaker products.
Johns Manville	2002 Strategic product and market research and analysis.
Tri-path	2002 - 2006 Technical support and system engineering for digital audio power amplifiers.
Extron	2002 - 2003 Technical and material support for loudspeaker development and research.
Microsoft	2003 - 2006 Anechoic chamber design. Electroacoustic product testing protocol development.
University of Illinois	2008 - 2009 Transducer and power amplifier design and selection for food industry processing equipment.
Microsoft	2008 - 2009 Anechoic chamber design. Electroacoustic product testing protocol development.
KLA-Tencor	2010 Vibration isolation engineering for scanning electron microscope semiconductor wafer inspection equipment.
Microsoft	2011 Acoustic measurement and analysis for Kinect manufacturing end-of-line 100% test chamber.
ETC	2011 Noise analysis and noise control for electrically operated variable speed theater hoist equipment.

Selected Projects - Neil A. Shaw:

Arcadia City Council Chambers	Arcadia, California
Grossmont Civic Auditorium	El Cajon, California
Center for Faith and Life, Luther College	Decorah, Iowa
Concert Hall, University of Kentucky	Lexington, Kentucky
Swimming Pool, University of Riyadh	Riyad, Saudi Arabia
Oakland-Piedmont Municipal Courts	Oakland, California
2500 seat Auditorium, 700 seat Auditorium,	
250 seat Library Hall, Mosque and Minaret,	
Gymnasium, Fine Arts Recital Hall, 100 seat	
Museum Hall, 500 seat Lecture Rooms, 250	
seat Lecture Rooms, 1000 seat Banquet Hall,	
200 seat Meeting Rooms, 100 seat Meeting	
Rooms, University of Riyadh	Riyad, Saudi Arabia
Des Moines Civic Auditorium	Des Moines, Iowa
California School For the Blind	Hayward, California
South Coast Air Quality Management District	
Hearing Room	El Monte, California
First United Methodist Church	Santa Monica, California
George R. Moscone Convention Center	San Francisco, California
H. J. Kaiser Convention Center	Oakland, California
Carson Community Center	Carson, California
LAX Terminal One	Los Angeles, California
Crocker Bank Auditorium	Los Angeles, California
Wilshire Auditorium, Fullerton College	Fullerton, California
Salt Palace Convention Center Expansion	Salt Lake City, Utah
Metro Toronto Convention Center and Theater	Toronto, Ontario
Orpheum Theater Restoration	Davenport, Iowa
Athanaeum, Claremont College	Claremont, California
San Jose Federal Office Building	San Jose, California
Fairmont Hotel	San Jose, California
LAX Terminal Five	Los Angeles, California
First Presbyterian Church	Upland, California
Royal Saudi Air Force Hush Houses	Saudi Arabia
NCO Training Facility, March AFB	Riverside, California
Veterans Administration Out Patient Clinic	Los Angeles, California
Lied Center for the Performing Arts,	
University of Nebraska	Lincoln, Nebraska
MaMaison Hotel	Los Angeles, California
Escondido City Council Chambers	Escondido, California
Mercy Hospital	San Diego, California
Mercy Hospital	Sacramento, California
Jain Bhavan Worship Center	Santa Ana, California
Ojai Valley Inn	Ojai, California
Simon Wiesenthal Center and Holocaust Museum	Los Angeles, California
New Otani Hotel	Los Angeles, California
Oceanside City Council Chambers	Oceanside, California
Santa Monica Beach Hotel	Santa Monica, California
Greenwood Racetrack	Toronto, Ontario
Woodbine Racetrack	Toronto, Ontario
Mohawk Racetrack	Campbellville, Ontario
Toyota Training Center	Torrance, California
Fresno Art Center	Fresno, California
McLaren Children's Center	Los Angeles, California

Lindbergh Field West Terminal Expansion
 Richard M. Nixon Presidential Library
 Carnation Headquarters
 Los Angeles County Bar Association
 Los Angeles Federal Office Building
 Intercontinental Hotel
 Lake Avenue Congregational Church
 Hewlett Packard Presentation Center
 Dance Recital Hall and Auditorium,
 California State University
 Inyo County Superior Court
 Adele Platt Conference Center,
 City of Hope Medical Center
 Los Angeles County Emergency Operation Center
 Antonio B Won Pat International Airport
 Temple Adat Sholam
 Sound Stage 29/30, Paramount Pictures
 Executive Screening Room, Theater,
 Dubbing Theater, Metro-Goldwyn-Mayer
 Lakeview Terrace Rehabilitation
 Facility, Phoenix House of Los Angeles
 Physiological Acoustics Research
 Facility, UCLA Medical Center
 Performing Arts Center
 Crystal Harmony, Crystal Cruise Lines
 Integrated Service Facility,
 NASA/Dryden Research Facility
 Theater, Metro-Goldwyn-Mayer
 Santa Ana Theater
 Sammy Davis Jr. Festival Plaza
 City Hall, Council Chamber
 Video Conference Facility, Sony Music
 Legend of the Seas, Royal Caribbean Cruise Lines
 Orange County Branch Library
 Screening Room, Warner Brothers Animation
 Screening Room, Turner Feature Animation
 Las Vegas Motor Speedway
 Large Screening Room, Metro-Goldwyn-Mayer
 Japanese American National Museum
 Carson City Courthouse
 St. Mel Parish Center
 Congregation Ner Tamid
 Old Town Temecula Streetscape
 Grandeur of the Seas, Royal Caribbean Cruise Lines
 Disney Magic, Disney Cruise Lines
 Coral Sky Amphitheater
 First Chinese Baptist Church
 St. Mark Coptic Orthodox Church
 C-17 Assembly Facility, Douglas Aircraft
 Division, The Boeing Corporation
 Crisci's Restaurant
 JamSync Studios
 New Standard Post
 Media Artists, Pty
 The Lobster

San Diego, California
 Yorba Linda, California
 Glendale, California
 Los Angeles, California
 Los Angeles, California
 Los Angeles, California
 Pasadena, California
 North Hollywood, California

Long Beach, California
 Independence, California

Duarte, California
 Los Angeles, California
 Tamuning, Guam
 Westwood, California
 Hollywood, California

Santa Monica, California

Lakeview Terrace, California

Westwood, California
 Lancaster, California
 Los Angeles, California

Edwards, California
 New York, New York
 Santa Ana, California
 Las Vegas, Nevada
 Santa Monica, California
 New York, New York
 Miami, Florida
 Aliso Viejo, California
 Glendale, California
 Glendale, California
 North Las Vegas, Nevada
 Santa Monica, California
 Los Angeles, California
 Carson City, Nevada
 Woodland Hills, California
 Rancho Palos Verdes, California
 Temecula, California
 Miami, Florida
 Orlando, Florida
 West Palm Beach, Florida
 Los Angeles, California
 Los Angeles, California

Long Beach, California
 Brooklyn, New York
 Nashville, Tennessee
 Hollywood, California
 Madras, India
 Santa Monica, California

International Rectifier
 Antelope Valley Courthouse
 Fe Bland Forum, Santa Barbara City College
 Arizona Humane Society
 Cartoon Network
 Santa Monica High School
 Malibu High School
 Barnum Hall Auditorium
 Sobrato High School
 Temple Beth El
 Sacramento East End Project
 Gold Circle Films
 Denver City Hall Extension
 Fullerton City Hall
 Union Station Improvement
 Intimate Theater, California State University
 San Diego Convention Center, Sails Pavilion
 Temple Shir Ha-Ma'A Lot
 United States Courthouse
 Department of Education Office Complex,
 State of California
 MGM Constellation Headquarters
 Ketchum Advertising
 Orange County Register
 28th Church of Christ, Scientist
 Temple Solel
 NT Audio Mixing and QC Rooms
 River Cats Restaurant
 Caltrans District 7 Headquarters
 1221 Ocean Avenue
 Memorial Assembly Hall
 City of Manhattan Beach Annex
 Twohy Building
 Widget Post Production
 1st Church of Christ, Scientist
 Sunrise Assisted Living
 Sunrise Assisted Living
 Sunrise Assisted Living
 Academy of Motion Picture Arts and
 Sciences Boardroom
 Getty Villa Outdoor Amphitheater
 Ressler Residence
 American Honda
 Community Baptist Church
 Bernard Hodes Agency
 Houston's Restaurant
 Café R&D
 Getty Center Auditorium
 Mid-City Police Station
 College of Humanities, Arts, and Social Sciences
 Instruction and Research Facility,
 University of California
 Genomics Research Facility,
 University of California
 Panasonic Hollywood Laboratory

Tijuana, Baja California, Mexico
 Lancaster, California
 Santa Barbara, California
 Phoenix, Arizona
 Glendale, California
 Santa Monica, California
 Malibu, California
 Santa Monica, California
 Morgan Hill, California
 Aliso Viejo, California
 Sacramento, California
 Beverly Hills, California
 Denver, Colorado
 Fullerton, California
 Los Angeles, California
 Los Angeles, California
 San Diego, California
 Irvine, California
 Fresno, California

Sacramento, California
 Century City, California
 Venice, California
 Santa Ana, California
 Westwood, California
 Escondido, California
 Santa Monica, California
 Sacramento, California
 Los Angeles, California
 Santa Monica, California
 Manhattan Beach, California
 Manhattan Beach, California
 San Jose, California
 Culver City, California
 Beverly Hills, California
 Pacific Palisades, California
 Santa Monica, California
 Woodland Hills, California

Beverly Hills, California
 Los Angeles, California
 Beverly Hills, California
 Torrance, California
 Manhattan Beach, California
 Marina Del Ray, California
 Santa Monica, California
 Newport Beach, California
 Los Angeles, California
 Los Angeles, California

Riverside, California

Riverside, California
 Universal City, California

Sports Spectrum Club
 Sunrise Assisted Living
 Rose Bowl
 First Presbyterian Church
 Los Angeles Fire Department Headquarters
 New York City Transit No. 7 Line Extension
 Los Angeles County Metropolitan Transportation
 Authority Goldline
 South Lawn Project, University of Virginia
 Shangri-La Hotel
 Pacific Star, Princess Cruise Lines
 Allied Post
 Jet Propulsion Laboratory von Karman Auditorium
 Self Realization Fellowship
 Temple Beth Am
 Broome Library, California State University,
 Channel Islands
 California High-Speed Train Project
 Morongo Band of Mission Indians Administrative
 Complex
 The Buddy Group
 Café R&D
 Club 7969
 Brent's Deli
 Santa Cruz County Criminal Justice Complex
 Porto's Bakery
 Microsoft Hardware Group Audio Test Laboratories
 University of California, Irvine, Arts Building
 Los Angeles Unified School District High
 School No. 9
 Notre Dame High School
 St. Mark Presbyterian Church
 Fame Academy Poly High School
 FAA Sonic Boom Simulator (with the
 Pennsylvania State University)
 Metropolitan Transit District Hearing Room
 St. Peter and St. Paul Coptic Church
 Lifehouse Properties
 Wilson Well No.2
 Habitat for Humanity Lynwood Housing
 Whole Foods Plaza
 Habitat for Humanity Burbank Housing
 The Cork
 Cove Way Residence
 Habitat for Humanity Lawndale Housing
 Forest Lawn Chapel
 Rodney Bay and Gros Islet Villages
 Panasonic Avionics
 Capitol Records
 Art of Living Foundation
 Conexant Corporation
 University of California, Santa Barbara
 Faculty Center
 Bill and Melinda Gates Foundation
 J Restaurant and Lounge
 Newcom

Pacific Palisades, California
 Simi Valley, California
 Pasadena, California
 Santa Monica, California
 Los Angeles, California
 New York, New York

 Los Angeles, California
 Charlottesville, Virginia
 Santa Monica, California
 Santa Clarita, California
 Santa Monica, California
 Pasadena, California
 Los Angeles, California
 Los Angeles, California

 Camarillo, California
 State of California

 Banning, California
 Irvine, California
 Santa Monica, California
 West Hollywood, California
 Westlake Village, California
 Nogales, Arizona
 Burbank, California
 Redmond, Washington
 Irvine, California

 South Gate, California
 Sherman Oaks, California
 Newport Beach, California
 Sun Valley, California

 State College, Pennsylvania
 Los Angeles, California
 Santa Monica, California
 Pacific Palisades, California
 San Gabriel, California
 Lynwood, California
 Malibu, California
 Burbank, California
 Los Angeles, California
 Beverly Hills, California
 Lawndale, California
 Cypress, California
 St. Lucia
 Lake Forest, California
 Hollywood, California
 Los Angeles, California
 Newport Beach, California

 Santa Barbara, California
 Seattle, Washington
 Los Angeles, California
 Santa Monica, California

American School in Vietnam	Hanoi, Vietnam
Apple Yellowstone Anechoic Chamber Facility	Cupertino, California
Barnum Hall Continuing Renovation	Santa Monica, California
Malibu High School Auditorium Renovation	Malibu, California
John Adams Middle School Auditorium Renovation	Santa Monica, California
Westminster Presbyterian Church	Newbury Park, California
American School in Bombay	Mumbai, India
Temple Judea	Tarzana, California
Holy Angel Church	San Marino, California
Kroc Institute for Peace and Justice	
University of San Diego	San Diego, California

7 June 2012

EXHIBIT 2

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

TEL: (650) 589-1660
FAX: (650) 589-5062
dkey@adamsbroadwell.com

SACRAMENTO OFFICE

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

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

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. MESSING

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

*Not admitted in California.
Licensed in Colorado.

September 23, 2021

VIA EMAIL AND OVERNIGHT MAIL

Oliver Netburn, City Planner
Department of City Planning
City of Los Angeles
200 North Main Street, Room 763
Los Angeles CA 90012
Email: oliver.netburn@lacity.org

Re: Supplemental Comments on the Initial Study / Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017- 4735-MND CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR

Dear Mr. Netburn:

We write on behalf of the Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA") to provide supplemental comments on the Initial Study and Mitigated Negative Declaration ("MND") prepared by the City of Los Angeles ("City") for the Rendon Hotel Project ENV-2017-4735-MND CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR ("Project"), The Rendon, LLC (the "Applicant") proposes a one-story addition to an existing three-story hotel and the construction, use, and maintenance of an attached 15-story hotel building with 103 guest rooms and approximately 15,907 square feet of commercial space comprised of an art gallery, café, restaurant, and bar uses.¹

We previously submitted written comments on the MND ("Comment Letter") on March 3, 2021.² Based upon our subsequent review of the MND and supporting documentation, we conclude that the MND also fails to comply with the

¹ MND p.8.

² See D. Key, Comments on the Initial Study / Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR (March 3, 2021), in City's files L5073-006acp

requirements of the California Environmental Quality Act³ (“CEQA”) by failing to accurately describe the Project’s parking requirements, and failing to accurately analyze and mitigate all required transportation issues.

As explained in these comments, there is a fair argument that the Project will result in potentially significant impacts relating to transportation that are not adequately mitigated by the proposed mitigation in the MND. The City may not approve the Project until it prepares an environmental impact report (“EIR”) that adequately analyzes the Project’s potentially significant direct, indirect, and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts.

We prepared these comments with the assistance of civil and traffic engineer expert Dan Smith. Mr. Smith’s technical comments and curricula vitae are attached as **Attachment A**.⁴ The attached expert comments require separate responses under CEQA.⁵ We reserve the right to supplement these comments at later hearings and proceedings related to the Project.⁶

I. THE MND FAILS TO ACCURATELY DESCRIBE, ANALYZE, AND MITIGATE THE PROJECT’S TRANSPORTATION IMPACTS

A. The MND Fails to Provide a Consistent Description of the Project’s Parking Requirements

The MND contains an internally inconsistent description of the number of parking spaces that are required and would be implemented for the Project. This inconsistency renders the MND’s conclusions about the Project’s employee vehicle miles travelled (“VMT”) impacts unsupported, and deprives the MND from serving as a vehicle of intelligent public participation in the decision-making process, as required by CEQA.⁷

³ Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. (“CEQA Guidelines”).

⁴ **Attachment A**: Letter from Dan Smith re *Comments on Rendon Hotel Project (Case Number: ENV-2017-4735-MND)* (September 23, 2021) (“Smith Comments”).

⁵ 14 CCR § 15088(a), (c).

⁶ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

⁷ *County of Inyo v. County of Los Angeles* (1977) 71 Cal. App. 3d 185, 197.

L5073-006acp

The MND's Project Description states that, per the Los Angeles Municipal Code ("LAMC"), the Project is required to provide 56 parking spaces and provides a clear narrative description of the derivation of that number of spaces based on application of LAMC Section 12.21.A.4.⁸ It also notes that the 56 spaces would be provided off-site by private agreement.⁹ Further description of the derivation of the 56-parking space requirement is provided in Table 3.3.¹⁰

However, the Transportation Section of the MND states that LAMC would require the provision of **195 parking spaces** for the Project, without providing any explanation of how this substantially larger parking space total was derived.¹¹ The Appendix G-1 Transportation Study similarly indicates that the LAMC required parking total is 195 spaces, again without explaining how this total was derived.¹² A closer reading of LAMC Section 12.21.A.4.b demonstrates that the total parking spaces required for the Project would actually be 59 parking spaces minus 10% for a bicycle reduction, making the total required parking 53 spaces. The parking calculations in MND Table 3.3¹³ therefore also does not line up with the parking requirements under LAMC Section 12.21.A.4. As a result, the MND lacks adequate support for the applicable parking calculation conducted pursuant to LAMC Section 12.21.A.4.b, and provides no support whatsoever for Appendix G-1's reliance on a parking requirement of 195 spaces.

This inconsistency is critical since it directly influences whether the significant employee-based VMT impact disclosed in the MND Transportation section is accurate, or will be mitigated by compliance with TDM reduced parking strategies, as asserted in the MND.¹⁴

The MND's inconsistent description of parking requirements prevents the public from evaluating the accuracy of the MND's employee VMT calculations, as discussed further below, and prevents the MND from serving as a vehicle of intelligent public participation in the decision-making process, as required by CEQA. Appendix G-1's reliance on a higher parking requirement has the effect of

⁸ MND, p. 38; See also Smith comment letter, pp. 1-2.

⁹ *Id.*

¹⁰ MND, p. 42; Smith comment letter, pp. 1-2.

¹¹ MND, p. 177.

¹² MND, p. 176; MND Appendix G, pp. 76.

¹³ MND, p. 42.

¹⁴ Smith comment letter, pp. 1-2; MND, pp. 172, 177.

minimizing the Project's impacts by not accurately describing the Project's transportation-related features.¹⁵

B. There is Substantial Evidence Supporting a Fair Argument the Project May Result in Significant, Unmitigated Transportation Impacts

CEQA requires that any assumptions used to estimate VMT and adjustments to model outputs be explained in the MND.¹⁶ The MND's reliance on 195 required parking spots as an input for their VMT calculation is unsupported and inconsistent with other sections of the MND, which state that only 56 spots are required.¹⁷ As a result, it is unclear the MND's employee VMT calculations may be inaccurate

The MND's Transportation section states that the Los Angeles Department of Transportation ("LADOT") Vehicle Miles Traveled ("VMT") Calculator estimates that the Project would generate a Project work VMT per employee of 9.2 miles.¹⁸ This is considerably above the applicable significance threshold for the Central APC Area of 7.6 miles per employee, and any level above 7.6 would be considered a significant impact according to Mr. Smith.¹⁹

The City tries to address this via Mitigation Measure MM-TR-2's reduction of on-site parking from based on the elimination of 195 spaces described in Appendix G-1. This reduction of parking spaces would result in the LADOT VMT Calculator predicting that the VMT per Employee would drop to 7.4 miles and would push the VMT under the significance threshold of 7.6 miles.²⁰ However, based on the parking requirements discussed in the MND's Project Description section, this calculation assumes too much of a reduction because the MND elsewhere states that only 56 spaces are required pursuant to the LAMC, not 195 as the City's VMT analysis claims.²¹ Assuming the MND accurately relies on LAMC Section 12.21.A.4 to calculate the Project's parking requirements, the VMT calculations in Appendix G-1 (and MM TR-2) incorrectly rely on a reduction in parking spaces that is four

¹⁵ *County of Inyo*, 71 Cal.App.3d at 197; *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 CA4th, 645, 655.

¹⁶ CEQA Guidelines, § 15064.3, subd. (b)(4).

¹⁷ *County of Inyo*, 71 Cal.App.3d at 197; *San Joaquin Raptor Rescue Ctr.*, 149 CA4th. at 655.

¹⁸ MND, pp. 177-179; Smith comment letter, p. 2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See MND pp. 38 vs. 77.
L5073-006acp

times greater than actually required.. The City has yet to effectively account for the discrepancy in the amount of claimed parking spot reductions in their analysis as is required under CEQA.²²

This erroneous analysis led to the MND presuming, pursuant to CEQA Guidelines section 15064.3(b)(1), that a reduction in the Project's VMT from parking reductions can be presumed to create a less than significant transportation impact. A VMT analysis relying on the correct amount of parking spots, 56, may not result in a VMT reduction and thus may actually indicate a significant, unmitigated transportation impact.²³ There is substantial evidence to support a fair argument that the City's reliance on 195 parking spots incorrectly suggested a VMT reduction would occur. The City must properly analyze the VMT impact by performing the same analysis using the 56 parking spots required under LAMC Section 12.21.A.4 (or 53 spots, if calculated with the Section's enumerated reduction for bicycle parking).

Moreover, the fact that the parking would be located off-site, would increase the VMT by valet maneuvers and/or searching the neighborhood for available on or off-street spaces by employees and would thus offset the normally generalized benefits of limited parking. It is also reasonably foreseeable that, to the extent that parking shortage encourages alternate modes of transportation, a share of these alternate mode trips may be served by TNCs (also known as ridesharing trips by companies like Uber and Lyft) that generate more VMT than ordinary drive-and-park trips because of the TNC vehicle's need to make an extra trip to make a pickup or circulate for the next trip after a drop-off. The City has yet to effectively account for the impact of TNC trips.²⁴

II. 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. 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 Mr. Smith. This is the only way the

²² CEQA Guidelines, § 15064.3, subd. (b)(4).

²³ CEQA Guidelines, § 15064.3, subd. (b)(1).

²⁴ Smith comment letter, p. 2.

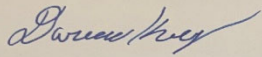
L5073-006acp

September 23, 2021
Page 6

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 attention to these comments.

Sincerely,

A rectangular box containing a handwritten signature in blue ink, which appears to read "Darien Key".

Darien Key

DKK:acp

Attachment

L5073-006acp

ATTACHMENT A



September 23, 2021

Mr. Darien Key
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Subject: Rendon Hotel Project IS/MND

Dear Mr. Key:

Per your request, I reviewed the Draft Initial Study/Mitigated Negative Declaration (the "IS/MND") for the Rendon Hotel Project (the "Project") in the City of Los Angeles (the "City"). My review is with respect to transportation and circulation considerations.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and over 50 years of professional consulting practice in these fields. I have both prepared and reviewed the transportation and circulation sections of numerous documents related to compliance with the California Environmental Quality Act ("CEQA"). My professional resume is attached.

My comments on the subject IS/MND follow.

The IS/MND's Description of Los Angeles Municipal Code Parking Requirements Applicable to the Project in the Transportation Section Are Inconsistent With Those Cited in the Project Description

The IS/MND Project Description states at page 38 that, per Los Angeles Municipal Code ("LAMC"), the Project is required to provide 56 parking spaces and provides a clear narrative description of the derivation of that number of spaces. It also notes that the 56 spaces would be provided off-site by private agreement. Further description of the derivation of the 56 parking space requirement is provided in Table 3.3 at page 42. However, the Transportation

Section of the IS/MND at page 177 states that LAMC would require provision of 195 parking spaces for the Project without providing any explanation of the derivation of this wildly different parking space total. The Appendix G-1 Transportation Study also at page 76 indicates the LAMC required parking total is 195 spaces, again without explanation of the derivation of this total. This inconsistency is critical since it directly influences the extent to which the Project complies with TDM reduced parking supply strategies, and whether the significant employee based VMT impact disclosed in the IS/MND Transportation section would be reduced to less than significant levels, as stated in the IS/MND at page 172/177.

The IS/MND Discloses That the Project Would Create a Significant Employee-Based Vehicle Miles Traveled Impact. But It Assumes That a Non-Existent Reduction In Project Parking From 195 Spaces to 0 Spaces Would Mitigate the Significant Impact. This Presumed Mitigation Is Derived from a Misinterpretation of LAMC of Parking Requirements

The IS/MND Transportation section states that the LADOT VMT Calculator estimates that the Project would generate a Project work VMT per employee of 9.2 miles. This is considerably above the applicable significance threshold for the Central APC Area of 7.6 miles per employee, and hence is a significant impact. However, it indicates that the Mitigation Measure MM-TR-2's reduction of on-site parking from the fictionally claimed 195 spaces per LAMC to 0 would result in the LADOT VMT Calculator predicting that the VMT per Employee would drop to 7.4 miles which is less than the significance threshold of 7.6 miles. However, since the required spaces under LAMC are only 56 and the 56 spaces are to be provided off-site by agreement, there is no reduction from the parking space requirement of LAMC.

Moreover, the fact that the parking would be located off-site, requiring extra VMT by valet maneuvers and/or searching the neighborhood for available on or off-street spaces by employees would offset benefits of limited parking. It is also reasonably likely that, to the extent that parking shortage encourages alternate modes, a large share of trips would be served by TNCs (also known as ridesharing trips by companies like Uber and Lyft) that generate more VMT than ordinary drive-and-park trips because of the TNC vehicle's need to make an extra trip to make a pickup or circulate for the next trip after a drop-off. The City has yet to effectively account for the impact of TNC trips.

Conclusion

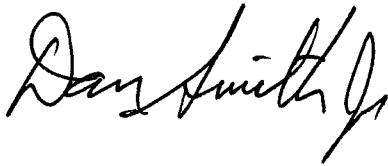
This concludes my current comments on the Rendon Hotel Project IS/MND. Given the foregoing, the transportation section of the IS/MND for this Project should be revised and reissued in draft status. In particular, a formal VMT

Mr. Darien Key
Adams Broadwell Joseph & Cardozo
March 3, 2021
Page 3

analysis must be prepared under consistent assumptions with the Project Description.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President



SMITH ENGINEERING & MANAGEMENT

DANIEL T. SMITH, Jr.
President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

PRATT • TRANSPORTATION • SAN FRANCISCO

5311 Lowry Road, Union City, CA 94587 tel: 510.489.9477 fax: 510.489.9478

Transportation Centers. Project manager for Daly City Intermodal Study which developed a \$7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking .

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard *et al.*, U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

EXHIBIT 3

From: [Oliver Netburn](#)
To: [Sheila M. Sannadan](#); [Alisha C. Pember](#)
Subject: Erratum to ENV-2017-4735-MND
Date: Thursday, March 17, 2022 11:07:54 PM
Attachments: [ENV-2017-4735-MND - Erratum.pdf](#)

Hello Sheila and Alisha,
Attached is an erratum to ENV-2017-4735-MND. This was only just completed. The erratum provides additional clarification and supplemental analysis to address any potential impacts resulting from the related case ZA-2021-9890-ZV, which I just sent you the Determination Letter.

Thank you!

--



Oliver Netburn
City Planner
Los Angeles City Planning

200 N. Spring St., Room 763
Los Angeles, CA 90012
Planning4LA.org
T: (213) 978-1382



EXHIBIT 4

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

TEL: (650) 589-1660
FAX: (650) 589-5062
dkey@adamsbroadwell.com

SACRAMENTO OFFICE

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

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

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO
MICHAEL R. SEVILLE

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

*Not admitted in California.
Licensed in Colorado.

April 18, 2022

Via Email and Overnight Mail

Oliver Netburn, City Planner
Los Angeles City Planning Department
200 N. Spring St., Room 763
Los Angeles, CA 90012
Email: oliver.netburn@lacity.org

Via Email Only

President Samantha Millman
Members of the City Planning Commission, City of Los Angeles
c/o Ms. Cecilia Lamas, Commission Executive Assistant
Email: cpc@lacity.org

Re: Comments to City Planning Commission re April 28, 2022 Hearings on the Rendon Hotel Project and CREED LA Appeal of Rendon Hotel Project (ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR; ZA 2021-9890-ZV)

Dear President Millman, City Planning Commission, Mr. Netburn:

On behalf of the Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA"), we are writing to the City of Los Angeles ("City") Planning Commission ("CPC") regarding the two upcoming April 28, 2022 hearings on the Rendon Hotel Project, ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR; ZA 2021-9890-ZV ("Project").

At the April 28 hearing, the CPC will address two items related to the Project. The first is the pending appeal filed by CREED LA of the March 17, 2022 Zoning Administrator's approval which (a) adopted the Project's Mitigated Negative Declaration (Case No. ENV-2017-4735-MND) ("MND") and Mitigation Monitoring Program, including the March 2022 Errata to the MND ("Errata", collectively "Revised MND"), and (b) approved a Zoning Variance from Los Angeles Municipal Code Section 12.21-A,4 to allow an apartment hotel use with 42 rooms in the M2-2D

L5703-009acp

Zone at 719-725 East 5th Street without a public hearing (“Appeal”). The City issued a Letter of Determination (“LOD”) regarding the Zoning Administrator’s approvals on March 17, 2022. CREED LA filed its Appeal on April 1, 2022. The second item will be the CPC’s consideration of the Project’s remaining entitlements and responses to comments on the MND.

As explained below and in CREED LA’s Appeal, the City is improperly proceeding with separate permitting processes for two components of the same Project, without analyzing the Project as a whole in a single environmental impact report (“EIR”) and without circulating the Revised MND for public review. These preliminary comments address issues raised in our Appeal, including comments on the Errata, as well as comments addressing the City’s September 9, 2021 *Responses To Comment Letters Received on the Rendon Hotel Project [ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAASPR]* (“Responses”). We request that the CPC refer to these comments and include them in the record of proceedings for both Rendon Hotel Project hearings.

CREED LA’s April 1, 2022 Appeal is attached hereto.¹ Our March 3, 2021 and September 23, 2021 comment letters on the Project are also attached hereto.² We incorporate those letters and attached expert comments by referenced herein. We reserve the right to file additional comments prior to the April 28 hearings, and to supplement these comments at later hearings and proceedings on the Project.³

I. PROJECT AND PROCEDURAL BACKGROUND

The original Project, proposed by Rendon, LLC (the “Applicant”), proposed a one-story addition to an existing three-story hotel and the construction, use, and maintenance of an attached 15-story hotel building with 103 guest rooms and approximately 15,907 square feet of commercial space comprised of an art gallery,

¹ See **Exhibit 1:** Appeal of Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR, April 1, 2022.

² See **Exhibit 2:** Letter from Darien Key to Oliver Netburn re: Comments on the Initial Study/Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR, March 3, 2021; **See Exhibit 3** Letter from Darien Key to Oliver Netburn re: Comments on the Initial Study/Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR, September 23, 2021.

³ 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.

café, restaurant, and bar uses.⁴ The City circulated the original MND for public comment in 2021. CREED LA filed comments on the MND, supported by expert comments, which provided the City with substantial evidence supporting a fair argument that the original Project had several significant, unmitigated environmental and public health impacts, and demonstrated that the MND's significance conclusions were not supported by substantial evidence.

Almost a year after the public comment period on the MND closed, the Project was expanded to add 42 new single room occupancy apartment units ("SROs") at an off-site location at 719-725 East 5th Street, the El Sol Hotel building.⁵ The addition of the SROs will expand the Project's footprint and requires additional interior construction activities to renovate the SROs in the El Sol Hotel building.⁶ Rather than prepare and circulate an EIR for the revised Project, or revise and recirculate the MND for additional public comment pursuant to the California Environmental Quality Act ("CEQA"), the City prepared a revised CEQA analysis, illegally labelled it as an "Errata," and appended it to the existing MND. The City then failed to circulate the Errata for public review before the Zoning Administrator approved the Revised MND and related permits for the additional SROs.

In addition to substantially altering the Project description, the Revised MND acknowledged that the proposed expansion of the Project will result in increased environmental impacts that were not considered in the original MND, including additional construction and operational air emissions, energy impacts, noise impacts, increased greenhouse gas ("GHG") emissions, hazardous materials, transportation, and utilities and public services.⁷ The Revised MND also includes new qualitative and quantitative analyses of each of these impacts which were not included in the original MND, and which should have been circulated for public review.

The Zoning Administrator also improperly approved permits for a portion of the Rendon Hotel Project and "adopted" the Revised MND for the entire Project before the majority of the Project's permits are considered for initial approval by the CPC. These were clear violations of CEQA's requirements that a project's potentially significant impacts must be analyzed in an EIR, that any substantive

⁴ MND p.1, 8.

⁵ Revised MND, p. 12.

⁶ Revised MND, p. 13.

⁷ Revised MND, pp. 12-27.

changes to a previously circulated CEQA document require recirculation pursuant to CEQA, and that the lead agency may not prematurely adopt a CEQA document before the underlying project is approved.⁸

The Revised MND and LOD failed to acknowledge or respond to CREED LA's comments and expert comments on the original MND, or to the MND comments of any other members of the public, demonstrating that the Zoning Administrator failed to consider these comments before adopting the Revised MND and approving a portion of the Project, in further violation of CEQA.⁹ The Zoning Administrator also failed to hold a public hearing before approving the Zoning Variance, in violation of the City's municipal code.

The record is clear that the Zoning Administrator abused its discretion and violated CEQA when it approved a Zone Variance and adopted the Project's Revised MND without a public hearing. CEQA requires that the potential impacts of this Project be evaluated in an EIR, not in an MND, because substantial evidence exists that the Project may have significant, unmitigated environmental impacts to air quality and public health, from GHG emissions and noise, and on transportation.

In short, the Zoning Administrator lacked the authority to approve the MND and the Zoning variance on March 17, 2022 and violated the due process rights of CREED LA and other members of the Project by adopting the Revised MND and approving a portion of the Project without a public hearing. The Zoning Administrator lacked the authority because: (1) the approval of the Zoning Variance and Revised MND under a separate project from the Rendon Hotel was premature and resulted in piecemealing of the approvals for a single project; (2) the City failed to consider our March 3, 2021 and September 23, 2021 comments regarding the MND, thus violating CEQA Guidelines Section 15074(b); (3) the "Errata" fails to conform to the requirements of CEQA Guidelines Section 15073.5 which necessitated, at a minimum, recirculation of the original MND for additional public comment on the new information and evidence addressing the environmental impacts of the Revised Project; (4) approval of the Zoning Variance resulted in

⁸ See Pub. Resources Code, §§ 21100; 21080 (d), 21082.2, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15064, subds. (f)(1), (h)(1), 15088.5, 15073.5; *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123 (*Laurel Heights II*); *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 (*Quail Botanical*); *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 418-25.

⁹ CEQA Guidelines, § 15074(b).

L5703-009acp

premature approvals which are not allowed under CEQA and *Save Tara*, and (5) approval of the Zoning Variance without a public hearing was a due process violation.

The CPC should grant CREED LA's Appeal and remand the entire Rendon Hotel Project to staff to prepare and circulate an EIR for the revised project.

The CPC is also being asked to consider the City's Responses to Comments, which were prepared in September 2021, before the Project was revised. As explained below and in the attached expert comments, the Responses fail to address the majority of substantive issues raised in CREED LA's original MND comments, fail to address the revised Project, and fail to provide the City with substantial evidence to support its conclusion that an EIR is not required for the Project.

By contrast, the record contains substantial evidence that supports a fair argument that that Project will cause: (1) significant, unmitigated cancer risk from toxic air contaminant emissions, (2) potentially significant, unmitigated impacts from GHG emissions, (3) significant, unmitigated impacts from noise, (4) significant, unmitigated impacts on transportation, and (5) significant unmitigated cumulative impacts. These impacts will be further compounded and exacerbated by the renovation of the El Sol Hotel, as described in the Errata, and must be addressed in an EIR

These comments were prepared with the assistance of environmental health, air quality, and GHG expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise ("SWAPE"), M.S., and Daniel Smith Jr., P.E., of Smith Engineering & Management, and acoustics expert Neil A. Shaw, FASA, FAES. Comments and curriculum vitae of Mr. Rosenfeld are attached to this letter as Exhibit 4.¹⁰ Mr. Smith's comments and curriculum vitae are included as Exhibit 5.¹¹ Mr. Shaw's comments and curriculum vitae are included as Exhibit 6.¹² **Exhibits 4-6** are fully incorporated herein and submitted to the City herewith. Therefore, the City must separately respond to the technical comments in Exhibits 4-6.

¹⁰ **Exhibit 4:** Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR; ZA 2021-9890-ZV) (Apr. 18, 2022) ("SWAPE Comments").

¹¹ **Exhibit 5:** Comments on 6445 Sunset Boulevard Project (SCH. No. 2022030272; Environmental Case No. ENV-2020-5408-ND) (Apr. 5, 2022) ("Smith Comments").

¹² **Exhibit 6:** Comments on 6445 Sunset Boulevard Project (SCH. No. 2022030272; Environmental Case No. ENV-2020-5408-ND) (Apr. 18, 2022) ("Shaw Comments").

II. THE CITY'S APPROVAL PROCESS VIOLATES PROCEDURAL DUE PROCESS AND CEQA REQUIREMENTS

The City has failed to approve the Project's CEQA document and the Zoning Variance in any method which is permissible under CEQA. These failures make all approvals by the Zoning Administrator on March 17, 2022 in violation of CEQA.

A. The Approval Of The Zoning Variance and MND As A Separate Project From The Rendon Hotel Has Resulted In "Piecemealing" Of The Project Which Is Impermissible Under CEQA

The Rendon Hotel Project and El Sol Hotel Project are two components of the same Project. Yet, the City prepared two separate cases with no connection between the two in their online data, despite abundant facts demonstrating that the El Sol Hotel renovation would not occur or be needed without the Rendon Hotel's requirement to replace residential units it was demolishing.

The City's Residential Hotel Unit Conversion and Demolition Ordinance (Ord. No.179,868), the Wiggins Settlement Agreement, and the City's CRA Guidelines and Controls for Residential Hotels in the Central Industrial Redevelopment Project Area require that the Rendon Hotel replace the 42 single-room occupancy (SRO) residential units present at the Rendon Hotel site on a one-to-one basis subject to the conditions in the ordinance and settlement agreement. The Applicant chose to do so at the El Sol hotel located at 719-725 E. 5th Street.¹³ This replacement is required by the City as part of the Project, but the separation of this replacement into two separate City cases results in "piecemealing" or "segmenting," which violates CEQA, as it inhibits the full disclosure, analysis, and mitigation of impacts, and discussion of alternatives.¹⁴ These violations are compounded by the City's

¹³ See generally, *Bozung v. LAFCO*, 13 Cal.3d 263, 283-84 (1975); *City of Santee v. County of San Diego*, 214 Cal.App.3d 1438, 1452 (1989); *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App.3d 151, 165 (1985).

¹⁴ E.g., Pub. Resources Code, §21002, 210021.1(a); CEQA Guidelines, §§ 151363, 15121, 15140, 15151 (An EIR is informational document whose purpose is to disclose and mitigate impacts, analyze a reasonable range of alternatives, and select as the project any alternative which can achieve project objectives, but is more protective of the environment, consistent with CEQA's substantive mandate); CEQA Guidelines, § 15378 (project description must include all project components).

confusing and improper decision to adopt the MND for the Rendon Project under the case number for the El Sol Hotel Project, and to rely on an errata to revise its substantive environmental analysis of the Project without public review.

1. The City Has Impermissibly Separated Consideration of The Rendon Hotel and El Sol Hotel Entitlements

The Rendon Hotel Project is classified under two separate cases for the City: (1) ENV-2017-4735-MND and (2) CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR-RDP. It is a common practice by the City to include both an environmental review case number which in this case indicates it is an MND review that started in 2017 and a case number that governs the reviewing authority which in this case is the City Planning Commission, with the process starting in 2017, and the entitlements sought: a general plan amendment, a zoning change, a height district change, a conditional use permit for beverages, a conditional use permit for dancing, a zoning variance, a zoning administrators adjustment, and a site plan review. These two cases (1) ENV-2017-4735-MND and (2) CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR-RDP are considered “related cases” in the City’s Planning Document Information System (“PDIS”).¹⁵ Thus a review of the “related cases” for each case number would indicate that only these two cases are related to the Rendon Hotel.

On the other hand, all environmental review and permit review for the El Sol Hotel is found under ZA-2021-9890-ZV and ENV-2021-9891-CE with those cases being “related cases” under PDIS as well.¹⁶ The separate cases create confusion and deprived the public of the required notice of the City’s intended adoption of the MND as part of the El Sol Project

¹⁵ See ENV-2017-4735-MND “related cases” PIDAS entry at <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjE3MTI40>; See CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR-RDP “related cases” PIDAS entry at <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjE3MTI30>.

¹⁶ See ENV-2021-9891-CE “related cases” PIDAS entry at <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjUyOTc30>; See ZA-2021-9890-ZV “related cases” PIDAS entry at <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjUyOTc20>.
L5703-009acp

2. Both The Rendon Hotel and The El Sol Hotel Have The Same Applicant and The El Sol Hotel Project Only Exists to Facilitate The Rendon Hotel

A review of both the MND and the Errata cover pages indicates that the Applicant is a “The Rendon LLC.”¹⁷ Additionally, if the cases were truly separate the environmental review for the El Sol would not be an “errata” to the Rendon’s MND, it would have its own MND. These facts demonstrate that the El Sol and Rendon are indeed one Project.

A project under CEQA means the “whole of an action which has the potential for resulting in either a direct physical change in the environment or reasonably foreseeable indirect physical change in the environment.”¹⁸ CEQA prohibits a project proponent from seeking approval of a large project in a piecemeal fashion in order to take advantage of environmental exemptions or lesser CEQA review for smaller projects.¹⁹ CEQA mandates “that environmental considerations do not become submerged by chopping a large project into many little ones - each with a minimal potential impact on the environment - which cumulatively may have disastrous consequences.”²⁰ Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project and a public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. As the Court of Appeal stated, “[t]he CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish.”²¹

Here, the Applicant first analyzed the original Project via an MND indicating one set of environmental impacts, but then bootstrapped on an environmental review of the El Sol over a year later as an “errata” which was then approved in a

¹⁷ MND Cover Page; Errata Cover Page.

¹⁸ CEQA Guidelines, § 15378(a).

¹⁹ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.*, 101 Cal.App.4th 1337, 1340 (2002).

²⁰ *Bozung v. LAFCO*, 13 Cal.3d 263, 283-84 (1975); *City of Santee v. County of San Diego*, 214 Cal.App.3d 1438, 1452 (1989); *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App.3d 151, 165 (1985).

²¹ *Natural Resources Defense Council v. City of Los Angeles*, 103 Cal.App.4th 268 (2002); see also *Whitman v. Board of Supervisors* (1979) (EIR for an exploratory oil well that failed to analyze the impacts associated with an proposed pipeline was inadequate and violated CEQA).

L5703-009acp

completely separate proceeding apart from the Rendon's.²² While these facts are more than enough to demonstrate piecemealing, the Zoning Administrator's March 17 approvals further compounded the piecemealing issues because the Zoning Administrator approved a portion of the Project and purportedly adopted the MND for the entire Project before the underlying Rendon Hotel entitlements are considered for approval by the CPC.

The CPC should vacate the Zonign Administrator approvals, and require the City to prepare an EIR to fully disclose, analyze, and mitigate the individual and cumulative impacts of the Rendon Hotel and the El Sol Hotel together. The EIR must be circulated for public comment, and analyze the environmental effects of other phases or future expansions of a project if the other activities are reasonably foreseeable consequences of the initial project.²³

III. THE MND FAILS TO PROVIDE AN ACCURATE AND COMPLETE PROJECT DESCRIPTION

An accurate and complete project description is necessary to evaluate the potential environmental effects of a proposed project.²⁴ Without a complete project description, the environmental analysis will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.²⁵ The courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."²⁶ Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs.²⁷

A. The MND Fails to Adequately Describe The Combined Impacts of the El Sol Hotel and the Rendon Hotel

The main result of the piecemealing in this case is that the Errata and MND in function operate as an environmental review for two separate projects when in

²² *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal. App. 4th 1333, 1340 (serial approval of multiple small housing and subdivision projects by same applicant in same location, leading to single large development project).

²³ *Bozung*, 13 Cal.3d at 283–284.

²⁴ See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

²⁵ See *ibid.*

²⁶ *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

²⁷ *Id.* at pp. 192-193.

L5703-009acp

actuality they are a single project. This divergence, as discussed below, results in MND and Errata conclusions that pertain only to the Rendon Hotel or El Sol Hotel, when they should have analyzed the effects from the Rendon and El Sol **together**. This failure has resulted in conclusions that are not supported by substantial evidence as discussed below.

IV. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS THAT REQUIRE THE CITY TO PREPARE AN EIR

CREED LA's MND comments included expert comments which provided the City with substantial evidence supporting a fair argument that the Project has several undisclosed and unmitigated environmental and public health impact which require further analysis under CEQA. The Revised MND did not respond to these issues and did not require any new or additional mitigation measures to address the significant impacts identified in CREED LA's comments. Given that the City has not addressed or made changes to the following issues regarding air quality, GHG, hazards, land use, noise, and transportation, the record still contains substantial evidence supporting a fair argument that significant environmental impacts exist which require an EIR. Additionally, the Errata presents new significant effects because the addition of 42 new SORs at a new location compounds the already existing significant impacts, still without appropriate mitigation.

A. There is Substantial Evidence Supporting a Fair Argument that the Revised MND Underestimates and Fails to Properly Mitigate Air Quality Impacts

We previously provided substantial evidence showing that the Project's Air Quality impacts would be significant because: (1) the MND failed to properly calculate construction and operational emissions in the CalEEMod software resulting in understated air quality impacts and (2) the MND failed to include a quantified health risk analysis ("HRA") or require additional mitigation in response to our expert's HRA, which established that cancer risks from the Project exceed the SCAQMD threshold of 10 in one million.

Additionally, the Errata did not perform an HRA, and thus reliance on the original MND's conclusion to have less than significant impacts is not supported by

substantial evidence because neither the MND nor the Errata considered TACs.²⁸ These issues are only compounded by the addition of emissions from work on the El Sol Hotel, and are thus likely to further exacerbate the Project's existing significant impacts on air quality.

B. The Project May Result in Significant, Unmitigated Hazard Impacts

The City claims that a review of the Envirostar Database is sufficient to identify hazards and thus the City is not required to perform a Phase 1 ESA.²⁹ This logic is fallacious at best. Under this line of reasoning, no site-specific tests should ever be done provided the site has no history of environmental issues. While this lack of RECs very well could be because there are no RECs, it could equally mean that no RECs have been previously identified but are present. A review of previously identified RECs from the Envirostar Database fails to provide site-specific factual analysis as required by CEQA.

An agency must support its findings of a project's potential environmental impacts with concrete evidence, with "sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision."³⁰ A project's hazards "must be 'clearly identified' and the discussion must include 'relevant specifics' about the environmental changes attributable to the Project and their associated outcomes."³¹

Courts have held that an environmental review document must disclose a project's potential health risks to a degree of specificity that would allow the public to make the correlation between the project's impacts and adverse effects to human health.³² In *Bakersfield*, the court found that the EIRs' description of health risks were insufficient and that after reading them, "the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin."³³ Likewise in *Sierra Club*, the California Supreme Court

²⁸ SWAPE comments, pp. 12-13.

²⁹ Response to comments 1.36, pp.40-41.

³⁰ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

³¹ *Id.* at 518.

³² *Id.* at 518–520; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

³³ *Id.* at 1220.

held that the EIR's discussion of health impacts associated with exposure to the named pollutants was too general and the failure of the EIR to indicate the concentrations at which each pollutant would trigger the identified symptoms rendered the report inadequate.³⁴ Some connection between air quality impacts and their direct, adverse effects on human health must be made. As the Court explained, "a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact."³⁵ CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts.³⁶

The failure to provide the information required by CEQA makes a meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.³⁷ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.³⁸ Courts reviewing challenges to an agency's approval of a CEQA document based on a lack of substantial evidence will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."³⁹

Claiming that hazards will be less than significant, the MND fails to include a Phase 1 ESA analysis to disclose the hazard impacts that will be present on the site. As a result, the MND fails to disclose the potentially significant risk posed to nearby residents and children from hazards, and fails to mitigate it. Because the MND fails to support its conclusion that the Project will not have significant hazards impacts with the necessary analysis, this finding is not supported by substantial evidence.

³⁴ *Sierra Club*, at 521.

³⁵ *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

³⁶ *Sierra Club*, 6 Cal.5th at 518–522.

³⁷ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

³⁸ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

³⁹ *Id.* (internal quotations omitted).

L5703-009acp

C. The Project May Result in Significant, Unmitigated Noise Impacts

We previously provided substantial evidence showing the MND's failures regarding the baseline noise analysis, and inadequacy of the proposed mitigation measures. These issues remain unresolved and the Project's noise impacts at the Rendon Hotel site remain unmitigated.

Additionally, the City claims without support that, because the El Sol Hotel previously contained SRO dwelling units, there will be no increase in operational noise. This by the City's own admissions is false since on the same exact page of the Errata the City notes the site is currently vacant.⁴⁰ The baseline for the Project's impacts from operation of the El Sol Hotel component of the Project is therefore zero.⁴¹ The City must perform an actual operational noise analysis stemming from the increase of 42 SRU in the vicinity of the El Sol Hotel and not rely on conclusory statements that there will be no net increase in operational noise.

1. The MND fails to establish a consistent baseline for ambient noise:

CEQA requires that a lead agency include a description of the physical environmental conditions in the vicinity of the Project as they exist at the time environmental review commences.⁴² As numerous courts have held, the impacts of a project must be measured against the "real conditions on the ground."⁴³ The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project's impacts.⁴⁴ The use of the proper baseline is critical to a meaningful assessment of a project's environmental impacts.⁴⁵ An agency's failure to adequately describe the existing setting contravenes the fundamental purpose of the environmental review process,

⁴⁰ Errata, p. 21.

⁴¹ *Hollywoodians Encouraging Rental Opportunities (HERO) v. City of Los Angeles et al.* (2019) 37 Cal.App.5th 768 (baseline for CEQA review of vacant building is that of unoccupied building, which was no longer part of rental market, rather than building's prior status as occupied apartment building).

⁴² CEQA Guidelines, § 15125, subd. (a).

⁴³ *Save Our Peninsula Com. v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the Sea v. Bd. of Supervisors* (1986) 183 Cal.App.3d 229, 246.

⁴⁴ CEQA Guidelines, § 15125, subd. (a).

⁴⁵ *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Ca.4th 310, 320.

L5703-009acp

which is to determine whether there is a potentially substantial, adverse change compared to the existing setting.

Baseline information on which a lead agency relies must be supported by substantial evidence.⁴⁶ The CEQA Guidelines define “substantial evidence” as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion.”⁴⁷ “Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts ... [U]nsubstantiated opinion or narrative [and] evidence which is clearly inaccurate or erroneous ... is not substantial evidence.”⁴⁸

Here the City claims to have conformed to LAMC section 111.02 which defines ambient noise to include :

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

Despite this definition, the MND’s baseline analysis fails to include any time that both construction and heavy traffic will be occurring, thus artificially reducing the “ambient noise” level.⁴⁹ By avoiding taking measurements from 7-9 a.m. or 4:30-7:00 p.m. the City reduced its expected ambient noise basis baseline by failing to account for the significant overlaps in heavy traffic and construction noise. Thus, the MND’s noise baseline is not supported by substantial evidence because because it is does not describe the actual ambient noises stemming from the Project.

⁴⁶ *CBE v. SCAQMD*, *supra*, 48 Ca.4th at 321 (stating “an agency enjoys the discretion to decide [...] exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence”); *see Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁴⁷ CEQA Guidelines §15384.

⁴⁸ Pub. Resources Code § 21082.2(c).

⁴⁹ Shaw Comments, pp. 1-2.

L5703-009acp

2. The City fails to analyze noise impacts that occur during operation.

The Revised MND's noise analysis omits several critical components. First, Mr. Shaw notes that the City's Responses to Comments fails to analyze impacts on sensitive receptors within 50 feet of the Project.⁵⁰

Second, Attachment D incorrectly analyses what operational noise levels should be at the outdoor terraces. Mr. Shaw's comments walk through how the City has impermissibly set the operational noise levels **above** what would result in significant noise impacts, and in some cases significantly higher thus resulting in de-facto significant noise impacts.⁵¹ Additionally, he notes how the City argues that sound levels will diminish the farther they travel from the source (which Mr. Shaw does not deny in theory) but that the City failed to provide the analysis demonstrating **how** the City's established levels would result in non-significant impacts by the time the noise reached the sensitive receptors.⁵²

3. The Revised MND fails to mitigate noise impacts that occur during operation.

Mr. Shaw notes that attachment D cites many mitigation measures which currently are not in the MMRP, that most of the underlying original comments have not been addressed, and that some proposed mitigation will not be effective or is merely speculative.

First, Mr. Shaw notes that the City still claims a carte blanche 10 dBA noise reduction from the acoustic barriers. He noted how this is improper because for line-of-site noise above the 8' barrier there **will be 0 dBA** additional noise reduction from the acoustic barrier, since the noise completely avoids the barrier. Mr. Shaw goes on to explain how the City's claims that the building itself will reduce noise below 5 dBA for levels above the second floor is demonstrably false and lacks substantial evidence since the facades are the last part to be added (and where any additional noise mitigation would come from).⁵³

⁵⁰ Response to Comments 1B.3; Shaw Comments, p.2.

⁵¹ Shaw Comments, pp. 2-3.

⁵² *Id.*

⁵³ Shaw Comments, pp. 3-4.

Mr. Shaw also notes that Attachment D's analysis requires the implementation of certain design features to achieve the required levels to avoid significance findings, without requiring them as binding mitigation. Attachment D would include (1) additional acoustic glass panels for the 4th and 15th floor terraces, (2) short-throw speakers (which purportedly reduce noise), and (3) tall operable acoustic wall for additional sound attenuation. Mr. Shaw addresses the fact that the "analysis" does not address how each of these will be implemented to achieve certain reductions since there are no measurements or analyses to demonstrate their effectiveness. Mr. Shaw even points out that the MND is unsure as well because "[p]reliminary calculations were performed to obtain approximate limits; **[with] final values to be determined during installation.**" Thus the MND relies on project design features which are in essence mitigation measures but which are not included in the MMRP, and for which analysis is impermissibly delayed until construction begins.

Lastly, Mr. Shaw notes that "short-throw speakers or similar technology" is misleading as a mitigation measure especially for sub-bass and bass frequencies, since the wavelength at these frequencies prevents "short throwing." He then concludes that this alleged mitigation may not be effective, practical, or even available as effective mitigation.⁵⁴ An EIR is required to correct these errors and effectively mitigate the Project's noise impacts.

4. The Revised MND's analysis lacks substantial evidence to support its conclusions

In addition to all the above issues, Mr. Shaw notes that the MND now includes "analysis" for an entirely additional hotel renovation. The Noise Analysis presented there is woefully inadequate according to Mr. Shaw for failure to include:

1. Analysis of the removal of demolition debris, i.e., hauling trucks and their associated parking needs;
2. Analysis of activities in the adjacent buildings;
3. Whether the roof will be renovated;
4. The proposed construction schedule;
5. Analysis for the statement "The fact that construction would be primarily enclosed within the existing building would reduce the exterior ambient noise

⁵⁴ Shaw Comments, pp. 3-4.
L5703-009acp

levels by approximately 20 dBA compared to if construction was all proposed outdoors."

6. Analysis regarding any nearby sensitive receptors instead of concluding "a majority of the land uses in the surrounding area consist of commercial and industrial land uses, which are typically not identified as sensitive receptors to noise."
7. What HVAC equipment will exist.

Failure to include analysis regarding these components renders the analysis unsupported by any substantial evidence.

The Errata concludes "as such, the ambient exterior noise levels surrounding the El Sol Hotel Project Site would not exceed 5 dBA or more on a temporary and intermittent basis during the construction period." This conclusion is unsupported. These inadequacies must be addressed in an EIR.

D. The Project May Result in Significant, Unmitigated Impacts on Transportation

We previously provided substantial evidence showing the MND's failures regarding the VMT analysis by impermissible parking reduction from a claimed 195 spots to 0 which artificially lowered the employee VMT from 9.2 to 7.4, and inadequacy of the proposed mitigation measures. Mr. Smith notes that this error is still present.⁵⁵ These impacts remain significant and unmitigated impacts.

Mr. Smith, states the Revised MND's assertion that a VMT analysis is not needed is factually wrong because, by the City's own admission, the El Sol Hotel VMT alone (294 Daily VMT/40 Daily Vehicle Trips = 7.35 VMT per capita) would exceed the Daily Household VMT per Capita threshold of 6 VMT for the Central Area.⁵⁶ As such, the VMT merely from the El Sol Hotel would be significant in its own right, not including the already significant impacts from the Rendon Hotel. The Revised MND, like the original MND, fails to disclose or mitigate this significant transportation impact.

Lastly Mr. Smith notes that "the development of 42 SRO units at the currently vacant El Sol hotel **is not an independent project** [and] [i]t is a

⁵⁵ Smith Comments, pp. 2-3.

⁵⁶ Errata Appendix C; MND, p. 175.
L5703-009acp

component of the Rendon Hotel Project.”⁵⁷ Because of this the VMT analysis should not be done separately as is currently done in the Errata and MND, but should be all inclusive to reflect on the fact that the Project is a single project, and not separate Projects. The City must remedy this by requiring the Project to be evaluated in an EIR.

V. THE REVISED MND FAILS TO CONSIDER AND ANALYZE CUMULATIVE IMPACTS

CEQA requires an evaluation of cumulative impacts, defined as “two or more individual effects which, when considered together, are considerable.”⁵⁸ Such impacts may “result from individually minor but collectively significant projects taking place over a period of time.”⁵⁹ Lead agencies must consider whether a project’s potential impacts, although individually limited, are cumulatively considerable.⁶⁰ “Cumulatively considerable” under CEQA means that “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”⁶¹

CEQA Guidelines section 15130(b)(1) provides two options for analyzing cumulative impacts: (A) list “past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or” (B) summarize “projection contained in an adopted local, regional or statewide plan, or related planning document that describes or evaluates conditions contributing to the cumulative effect.”⁶² “When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project’s incremental contribution to the cumulative effect is not cumulatively considerable.”⁶³

⁵⁷ Smith Comments, p.1

⁵⁸ 14 C.C.R. § 15355.

⁵⁹ 14 C.C.R. § 15355(b).

⁶⁰ PRC § 21083(b); 14 C.C.R §§ 15064(h)(1), 15065(a)(3).

⁶¹ CEQA Guidelines §15064(h)(1).

⁶² 14 C.C.R. § 15130(b)(1).

⁶³ *Id.*; *see id.* § 15130(a) (stating that the lead agency shall describe its basis for concluding that an incremental effect is not cumulatively considerable).

L5703-009acp

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

A. The Revised MND Fails to Disclose, Analyze, and Mitigate Cumulative Impacts to Air Quality

The Responses still do not adequately address the cumulative impacts to air quality. Our MND comments explained that the MND failed to analyze “past projects, the effects of other current projects, and the effects of probable future projects.”⁶⁴ The MND fails to correct this omission because it still does not analyze any other closely related, past, present, or reasonably foreseeable probable future projects let alone attempt to quantify their emissions and, thus, to evaluate them cumulatively with the Project.

Thus, the method utilized by the City still fails to meet the basic requirements for a cumulative air quality analysis required by CEQA, irrespective of the cumulative impact methodology outlined in SCAQMD’s L.A. CEQA Threshold Guide (2006). Under CEQA, a cumulative impact “consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts.”⁶⁵ In order to perform a legally adequate cumulative impact analysis, the MND must either include a review of the list of related projects and identify those that would have pollutant or odor emissions, or a summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect.⁶⁶ CEQA does not authorize the lead agency to conclude that a project’s cumulative impacts are less than significant simply because its project-level impacts do not exceed an individual project emissions threshold, as the MND asserts here. This “drop on the bucket” approach has been repeatedly rejected by the courts.⁶⁷ The City’s air quality cumulative

⁶⁴ CEQA Guidelines §15355(b).

⁶⁵ CEQA Guidelines §15130(a)(1).

⁶⁶ *Id.* At subs. (b)(1).

⁶⁷ *Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 721.

⁶⁷ 219 Cal. App. 4th at 841-42

L5703-009acp

analysis is thus clearly still deficient and must be supported by the preparation of a revised EIR.

Additionally, while the City may select how to determine the significance of cumulative impacts under Section 150464(h)(3), which makes up their entire rebuttal argument, their analysis is incomplete because while SCAQMD ties project specific impacts and cumulative impacts to the same level, the MND did not analyze “whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.”⁶⁸

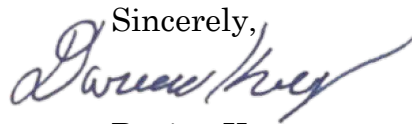
Thus, the cumulative impact analysis is still deficient and must be remedied in an EIR.

VI. CONCLUSION

As a result of the errors described herein and in our attached MND Comments, the Zoning Administrator’s adoption of the Revised MND, and approval of a Zoning Variance for the Project, resulted in violations of CEQA and other land use laws, and must be overturned.

We urge the CPC to grant our appeal and order the preparation of an EIR for the Project. The CPC may not consider approving the Project’s remaining entitlements until an EIR is prepared.

Thank you for your attention to this important matter.

Sincerely,

Darien Key

DKK:acp

⁶⁸ *Id.* at 118–121; *Kings County Farm Bureau*, 221 Cal.App.3d at 718.
L5703-009acp

EXHIBIT 5

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

TEL: (650) 589-1660

FAX: (650) 589-5062

dkey@adamsbroadwell.com

SACRAMENTO OFFICE

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

TEL: (916) 444-6201

FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO
MICHAEL R. SEVILLE

April 25, 2022

Of Counsel

MARC D. JOSEPH
DANIEL L. CARDOZO

**Not admitted in California.
Licensed in Colorado.*

Via Electronic Submission

President Samantha Millman

Members of the City Planning Commission, City of Los Angeles

Ms. Cecilia Lamas, Commission Executive Assistant

Email: cpc@lacity.org

Via Email Only

Oliver Netburn, City Planner

Los Angeles City Planning Department

200 N. Spring St., Room 763

Los Angeles, CA 90012

Email: oliver.netburn@lacity.org

Re: Supplemental Comments on Items 12 and 13 of the Los Angeles Area City Planning Commission April 28, 2022 Hearing regarding the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR; ZA 2021-9890-ZV

Dear President Millman, City Planning Commission, Mr. Netburn:

On behalf of the Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA"), we are writing to the City Planning Commission ("CPC") regarding Agenda Items 12 and 13 related to the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR; ZA 2021-9890-ZV ("Project"). Item 12 will address CREED LA's appeal of the Zoning Administrator's approval of a Zone Variance for the Project's additional 42 apartment hotel rooms, and adoption of the Project's Mitigated Negative Declaration ("MND") and March 22 Errata to the MND. The Zoning Administrator issued these approvals without a public hearing and issued a Letter of Determination ("LOD") on March 17, 2022. CREED LA filed an appeal of this decision on April 1, 2022. Agenda Item 13 will address the Project's remaining entitlements and the City's responses to comments on the original MND.

These comments were prepared with the assistance of environmental health, air quality, and greenhouse gas ("GHG") expert Paul E. Rosenfeld, Ph.D., and hazardous

L5073-010acp

April 25, 2022

Page 2

materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise (“SWAPE”). Comments of Mr. Rosenfield are attached to this letter as Exhibit 1.¹

As explained herein and in CREED LA’s appeal and prior comments on the Project, the City’s environmental review and approval process violates the California Environmental Quality Act (“CEQA”) because the City has failed to prepare a single environmental impact report (“EIR”) to analyze the whole of the Project, and the Zoning Administrator’s March 2022 approvals and CEQA findings were premature. CREED LA respectfully requests that the CPC vacate the Zoning Administrator’s approvals, and decline to take any further action to approve the Project until the City prepares an EIR which fully analyzes and mitigates the Project’s environmental impacts, as required by CEQA.

I. THE ZONING ADMINISTRATOR’S PROJECT APPROVAL PROCESS VIOLATED PROCEDURAL DUE PROCESS AND CEQA REQUIREMENTS

As explained in CREED LA’s Appeal, the Zoning Administrator violated the Los Angeles Municipal Code (“LAMC”) and CEQA by approving a portion of the Revised Project before the rest of the Project is considered by the CPC, by failing to analyze the Revised Project in a single CEQA document, and by adopting the Revised MND without public comment or a public hearing, when the majority of the Project’s entitlements require a public hearing pursuant to the LAMC.² The CPC should rescind all approvals issued by the Zoning Administrator on March 17, 2022, require that an EIR be prepared for the Revised Project, and require the Zoning Administrator to conduct a public hearing on the Zoning Variance.

A. The Approval Of The Zoning Variance and MND As A Separate Project From The Rendon Hotel Resulted In Improper Piecemealing Of The Project’s Environmental Review

The Rendon Hotel Project and El Sol Hotel Project are two components of the same Project. There is abundant evidence in the record demonstrating that the El Sol Hotel renovation would not occur or be needed but for the Rendon Hotel Project’s need to replace the residential units it will demolish. Yet, the City prepared two separate land use cases with no connection between the two in their online data, and failed to analyze the impacts of the Project as a whole in a single CEQA document for public review.

¹ **Exhibit 1:** Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR; ZA 2021-9890-ZV) (Apr. 18, 2022) (“SWAPE Comments”).

² 14 CCR § 15202(c), (d).

L5073-010acp

The El Sol component adds an additional 42 SRO units to the Project, representing a substantial increase in units. These units were added after the public comment period on the original MND closed and before the Project had received any approvals from the City. The City therefore should have, at a minimum, revised and recirculated the MND for additional public comment to analyze and mitigate the environmental and public health impacts of the El Sol component in conjunction with the rest of the Project. Instead, the City improperly prepared an Errata to the MND, which included new substantive analyses of the El Sol component, but was not circulated for public review, and did not analyze the impacts of the Project as a whole. This was a violation of CEQA's basic requirements to analyze the impacts of the entire Project in a single CEQA document.

The City's rebuttal asserts that "the City did conduct one (1) environmental review as [required] under CEQA, [because] the two (2) projects are related." This response misses the mark and fails to comply with CEQA, because it fails to acknowledge that the Rendon Hotel and El Sol Hotel are, in fact, the same project.

The City analyzed the original Project via an MND indicating one set of environmental impacts but then bootstrapped its environmental review of the El Sol Hotel component over a year later as an "errata" which was then approved in a completely separate proceeding apart from the Rendon Project.³ While the El Sol and Rendon analysis are found in two volumes of what the City contends is the same CEQA document, the impacts of the two Project components were not analyzed together.

For example, under the transportation analysis in the Errata, the analysis states that there will be less than 250 daily trips and thus no need for VMT analysis. This position is non-sensical, since the original MND did perform a VMT analysis because the Rendon Hotel component of the Project results in over 250 trips. To comply with CEQA, the City should have prepared a revised VMT analysis which analyzed the additional trips added by the El Sol component in conjunction with the original trips from the Rendon Hotel component, not a separate analysis. Although the City labelled the new CEQA document an "Errata" to the MND, its content treated the Project components as if they were two separate projects. The Errata also failed to respond to the MND comments submitted by CREED LA and other members of the public, and failed to correct the errors and omissions in the City's original CEQA analysis that was described in those comment. The City's responses to comments are only addressed in the CPC's staff report related to the Project's outstanding entitlements. In essence, the City created two separate environmental review documents under one MND case file. Because the Errata and MND analyze their impacts

³ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal. App. 4th 1333, 1340 (serial approval of multiple small housing and subdivision projects by same applicant in same location, leading to single large development project).

separately from each other, the Project is piecemealed together under the guise of a single MND.

“CEQA mandates that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.”⁴ The City must repair this by preparing an EIR.

B. The Zoning Administrator’s Findings Violated CEQA and the LAMC and Were Not Supported by Substantial Evidence

The Zoning Administrator’s approval of the Revised MND and Zoning Variance without considering public comments submitted on the original MND, and without a public hearing violated CEQA and the LAMC and rendered the LODs’ findings unsupported.

1. The “Errata” Fails To Conform To The Requirements Of CEQA Guidelines Section 15073.5

The City maintains its claims that, because no “new avoidable significant effect” was identified, the need for recirculation does not exist. As we previously identified there is new substantive environmental analysis in the MND and thus requires public review and comment under CEQA. Additionally, any claims to this effect are patently wrong due to our office’s previous MND comments, which introduced substantial evidence into the record regarding significant effects to air quality, energy, GHG, hazards, land use, noise, and transportation. Thus, this Revised Project’s addition of further environmental impacts to the previously identified issues compounds existing significant effects disclosed in the original MND, requiring recirculation of the MND at a minimum, and preparation of an EIR to fully comply with CEQA.

2. The “Errata” And Its Underlying Appendices Were Not Circulated for Public Comment

As discussed in CREED LA’s prior comments, there is substantial evidence supporting a fair argument that there are significant impacts which thus require preparation of an EIR, or, at a minimum, recirculation of the MND. Still, as of the date of this appeal letter, neither the Errata nor its underlying Appendices have been made available to the public via the Planning Departments website or the PIDAS system for either the Rendon Hotel or El Sol Hotel case numbers, and the Errata was not circulated for a legally required 20-30 day comment period.

⁴ East Sacramento Partnerships for a Livable City v. City of Sacramento (2016) 5 Cal.App.5th 281, 293 (Dec. 6, 2016).
L5073-010acp

CEQA requires a public review of environmental documents, not secret “Erratas” bootstrapped onto existing MNDs which are then approved in secret hearings when the City has received public comments on said MND. The City’s actions violate CEQA disclosure requirements and have resulted in a violation of the public’s and CREED LA’s due process rights.

C. Approval Of The Zoning Variance Resulted In Premature Approvals Which Are Not Allowed Under CEQA And *Save Tara*.

We reiterate that CEQA mandates that agencies refrain from approving and adopting an MND before full consideration of all aspects of a project.⁵ The Zoning Administrator’s actions in approving the Revised MND *before* the majority of the Project’s entitlements had been considered by the Commission or City Council was a clear violation of CEQA, which “skirt[red] the purpose of CEQA by segregating environmental review of the [MND] from the project approval.”⁶

The Planning Commission should uphold this appeal, vacate the Zoning Administrator’s approval of the Revised MND and approval of the Zoning Variance, and vacate its CEQA findings.

D. The Zoning Administrator Lacked Substantial Evidence to Make Findings Under LAMC Section 12.27 To Waive The Public Hearing

The City once again misses the mark in its response to the raised comment. The City notes that “the appellant has not raised issue with the merits of the Zone Variance itself, but instead with procedural matters related to the related project at 2053-2059 East 7th Street, and environmental review.”

CEQA is a law that governs environmental review *procedures* which in this case has been grossly ignored. Courts routinely state that informed decision making and public participation are fundamental purposes of the CEQA process. The issue here is that the City approved the MND *without a hearing* when the City is required to under its own municipal code. Furthermore the City’s analysis of public controversy was artificially limited to the zoning variance and its public controversy when in fact the hearing approved both the variance and the MND for an entire Project not on the variance project site. This can only be remedied by preparing an EIR.

⁵ 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.

⁶ *California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325, 1341.
L5073-010acp

II. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS THAT REQUIRE THE CITY TO PREPARE AN EIR

A. The MND Fails to Disclose and Analyze the Health Risk Posed by the Project's Air Emissions from Construction and Operation

The MND and Errata fail to disclose and analyze health risks from construction emissions and lacks a quantified health risk analysis (“HRA”), in violation of CEQA. An agency must support its findings of a project’s potential environmental impacts with concrete evidence, with “sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision.”⁷ In particular, a project’s health risks must be ‘clearly identified’ and the discussion must include ‘relevant specifics’ about the environmental changes attributable to the Project and their associated health outcomes.”⁸

This mandate cannot be performed without an HRA and thus the City is violating its obligations under CEQA. A detailed health risk analysis is necessary to determine how significant those impacts will be and if mitigation measures are sufficient to avoid risks to public health.

B. The Project May Result in Significant, Unmitigated Hazard Impacts

The City’s continued claims that a review of the Envirostar Database is sufficient to identify hazards is incorrect.⁹ An agency must support its findings of a project’s potential environmental impacts with concrete evidence, with “sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision.”¹⁰ A project’s hazards “must be ‘clearly identified’ and the discussion must include ‘relevant specifics’ about the environmental changes attributable to the Project and their associated outcomes.”¹¹

Claiming that hazards will be less than significant, the MND fails to include a Phase 1 ESA analysis to disclose the hazard impacts that will be present on the site. As a result, the MND fails to disclose the potentially significant risk posed to nearby residents and children from hazards, and fails to mitigate it. Because the MND fails to support its conclusion that the Project will not have significant hazards impacts with the necessary analysis, this finding is not supported by substantial evidence.

⁷ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

⁸ *Id.* at 518.

⁹ Response to comments 1.36, pp.40-41.

¹⁰ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

¹¹ *Id.* at 518.

C. The Project May Result in Significant, Unmitigated Impacts on Transportation

We previously provided substantial evidence showing the MND's failures regarding the VMT analysis by impermissible parking reduction from a claimed 192 spots to 0 which artificially lowered the employee VMT from 9.2 to 7.4, and inadequacy of the proposed mitigation measures. These impacts remain significant and unmitigated impacts.

Additionally, the Revised MND erroneously concludes no VMT analysis is required for the El Sol Hotel because it would result in less than 250 vehicle trips. There is no evidentiary support for this statement, which is demonstrably false given that the El Sol Hotel will increase VMT over the Project's previously analyzed VMT. An increase in transportation impacts requires CEQA review ..

Lastly, the Revised MND's assertion that a VMT analysis is not needed is factually wrong because, by the City's own admission, the El Sol Hotel VMT alone (294 Daily VMT/40 Daily Vehicle Trips = 7.35 VMT per capita) would exceed the Daily Household VMT per Capita threshold of 6 VMT for the Central Area.¹² As such, the VMT merely from the El Sol Hotel would be significant in its own right, not including the already significant impacts from the Rendon Hotel. The Revised MND, like the original MND, fails to disclose or mitigate this significant transportation impact. The City must remedy this by requiring the Project to be evaluated in an EIR.

III. CONCLUSION

As a result of the errors described herein and in our attached MND Comments, the Zoning Administrator's adoption of the Revised MND, and approval of a Zoning Variance for the Project, resulted in violations of CEQA and other land use laws, and must be overturned. We urge the Planning Commission to grant our appeal and order the preparation of an EIR for the Project. Thank you for your attention to this important matter.

Sincerely,

Darien Key

Attachment
DKK:acp

¹² Errata Appendix C; MND, p. 175.
L5073-010acp



Technical Consultation, Data Analysis and
Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G., C.Hg.
(949) 887-9013
mhagemann@swape.com

Paul E. Rosenfeld, PhD
(310) 795-2335
prosenfeld@swape.com

April 21, 2022

Darien Key
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd #1000
South San Francisco, CA 94080

Subject: Comments on the Rendon Hotel Project (Case Number: ENV-2017-4735-MND)

Dear Mr. Key,

We have reviewed the September 2021 Responses to Comment Letters ("RTC"), March 2022 Erratum to the Mitigated Negative Declaration ("Erratum"), and the February 2021 Initial Study/Mitigated Negative Declaration ("IS/MND") for the Rendon Hotel Project ("Project") located in the City of Los Angeles ("City"). After our review of the RTC, we find that the RTC is insufficient in addressing our concerns regarding the Project's hazards, hazardous materials, and air quality impacts. As asserted in our comment letter dated February 25, 2021, an EIR should be prepared to adequately evaluate the Project's potential impacts.

Hazards and Hazardous Materials

Inadequate Analysis of Impacts

Our February 25th letter stated that a Phase I Environmental Site Assessment ("ESA") was necessary to provide for adequate disclosure of hazardous and hazardous materials impacts. The RTC states that review of the Department of Toxic Substances Control Envirostor website is adequate for determining impacts and states:

"There is no evidence to suggest there is a history of hazardous waste contamination on the Project Site, nor does the commenter provide any source or reason to suggest there are hazardous materials associated with the Project Site. Therefore, a Phase I ESA would not be required for the Project Site to confirm these conclusions" (p. 41):

The evidence to identify hazardous waste contamination on the Project Site is commonly obtained through the preparation of a Phase I ESA and that is precisely why such a study must be conducted. A review of a regulatory database, such as Envirostor, is only one tool to provide evidence of hazardous waste contamination. A Phase I ESA provides a much more reliable basis for disclosure of impacts, by including:

- an inspection;
- interviews with people knowledgeable about the property; and
- recommendations for further actions to address potential hazards.

We maintain that a search of the Envirostor website, as performed for the IS/MND, provides an insufficient basis for disclosing Project impacts. We reiterate our February 25th comment that the preparation of an EIR, to include a Phase I ESA, is necessary to identify any potential environmental contamination issues at the proposed Project site.

Air Quality

Unsubstantiated Input Parameters Used to Estimate Project Emissions

In our February 25th comment letter, we identified several issues with the IS/MND's air model (California Emissions Estimator Model, "CalEEMod")¹ that artificially reduced the Project's construction and operational emissions. After review of the RTC, we found that the RTC fails to address all our concerns and we continue to maintain that the IS/MND's CalEEMod model is flawed and fails to accurately estimate the Project's criteria air pollutant emissions. As such, we find the IS/MND and RTC to be inadequate and we continue to maintain that an EIR should be prepared to adequately evaluate the Project's local and regional air quality impacts. Until a proper air quality analysis is conducted, the Project should not be approved.

Incorrect Area-Related Operational Mitigation Measure

As discussed in our February 25th comment letter, the "Rendon Hotel Project" CalEEMod model included several unsubstantiated operational mitigation measures. Review of the RTC demonstrates that the Project again fails to justify the inclusion of the "Use of Low VOC Cleaning Supplies" area-related mitigation measure. As discussed below, we find the IS/MND and RTC to be inadequate and maintain that the air quality impact significance determination is unsubstantiated.

Specifically, the RTC states:

"In the CalEEMod model, analytical assumptions such as providing no hearths, using low-VOC cleaning supplies, applying water conservation strategies, and instituting recycling and composting services are only available under the mitigation scenario. The interface on CalEEMod (Version 2016.3.2) lists these rules under the "Mitigation" tab, when they are actually required rules by the SCAQMD, State, and/or City. The term "Mitigation" in CalEEMod is defined differently than "Mitigation Measures" in the IS/MND. The model does not allow for these

¹ "CalEEMod Version 2016.3.2." California Air Pollution Control Officers Association (CAPCOA), November 2017, available at: <http://www.aqmd.gov/caleemod/archive/download-version-2016-3-2>.

features to be implemented in the “unmitigated project” impact scenario. As such, the values that appear under the mitigated results columns are reflective of the Proposed Project impacts that are compliant with required State and City policies and regulations. While these features are termed mitigation in the model, they are in fact required for all projects, and are not considered mitigation measures. In the present case, the application of these features are regulatory compliance measures and are not proposed or recommended as mitigation measures. The Proposed Project’s air quality impacts have been determined to be less than significant assuming all regulatory compliance measures are implemented. As such, no mitigation measures are warranted” (p. 19-20).

However, the inclusion of the above-mentioned area-related mitigation measure remains unsubstantiated, as the IS/MND fails to mention or require the use of low VOC cleaning supplies whatsoever. As the IS/MND and RTC fail to properly commit to the implementation, enforcement, and monitoring of the above-mentioned area-related mitigation measure, its inclusion in the model remains unsupported. As a result, we reiterate our February 25th comment that the IS/MND’s CalEEMod model is unsubstantiated, and the IS/MND’s and RTC’s less-than-significant air quality impact conclusion should not be relied upon.

Disclaimer

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matt Hagemann".

Matt Hagemann, P.G., C.Hg.

A handwritten signature in blue ink, appearing to read "Paul Rosenfeld".

Paul E. Rosenfeld, Ph.D.