



## APPLICATIONS:

# APPEAL APPLICATION CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) Instructions and Checklist

**Related Code Section:** The Los Angeles Municipal Code (LAMC) Section 11.5.13 (Ord. No. 186,338) established the appeal procedure to the City Council for California Environmental Quality Act (CEQA) determinations.

**Purpose:** *The Appeal* - A CEQA clearance can only be appealed if a non-elected decision-making body (ZA, APC, CPC, DIR) makes a determination for a project that is not further appealable. To initiate appeal of a CEQA document this form must be completely filled out with the required materials attached and filed within 15 calendar days from the final administrative decision, of the entitlement application.

### General Information

Appealable CEQA documents:

- Certified Environmental Impact Report (EIR)
- Sustainable Communities Environmental Assessment (SCEA)
- Mitigated Negative Declaration (MND)
- Negative Declaration (ND)
- Categorical Exemption (CE)
- Sustainable Exemption (SE)

#### NOTE:

- Actions not appealable include an addendum, findings made pursuant to CEQA Guidelines Section 15162, or an action in which the determination does not constitute a project under CEQA.
- All CEQA appeals are heard by the City Council.
- This form is only for the appeal of Department of City Planning determinations: All other CEQA appeals are filed with the City Clerk pursuant to the LAMC Section 197.01.
- 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.

### 1. Case Information

Environmental Case Number: \_\_\_\_\_

Related Entitlement Case Number(s): \_\_\_\_\_

Project Address: \_\_\_\_\_

Date of Final Entitlement Determination: \_\_\_\_\_

The CEQA Clearance being appealed is a(n):

☐ EIR
 ☐ SCEA
 ☐ MND
 ☐ ND
 ☐ CE
 ☐ SE

### 2. Appellant Identity (check all that apply)

- ☐ Representative
 ☐ Property Owner
 ☐ Other Person
- ☐ Applicant
 ☐ Operator of the Use/Site

### 3. Appellant Information

Appellant Name: Coalition for Responsible Equitable Economic Development Los Angeles (CREED LA) c/o Aidan Marshall

Company/Organization: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

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

☐ Self ☐ Other: \_\_\_\_\_

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

#### 4. Representative/Agent Information

Representative/Agent name (if applicable): \_\_\_\_\_

Company: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

#### 5. Appeal Justification

Attach a separate sheet providing your specific reasons for the appeal. Your reasons must state how you believe CEQA was incorrectly applied, providing a legal basis for the appeal.

#### 6. Applicant's Affidavit

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

Appellant Signature:  Date: January 12, 2023

### ENVIRONMENTAL APPEAL FILING REQUIREMENTS

Note: City Clerk prepares mailing list for CEQA appeals per LAMC Section 11.5.13 E.

- 1. 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.

- ☐ Environmental Appeal Application (form CP-7840)
- ☐ Justification/Reason for Appeal
- ☐ Copies of the written Determination Letter, from the final appellate body, which must be a non-elected decision-making body

**2. 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. "Environmental Appeal Application.pdf", "Justification/Reason Statement.pdf", "Final Determination Letter.pdf"). No file should exceed 9.8 MB in size.

**3. Appeal Fee**

- ☐ Original Applicant - A fee equal to 85% of the original application fee of the Environmental case; provide a copy of the original application receipt(s) to calculate the fee per LAMC Section 19.01B 1.
- ☐ Other Persons - The fee charged shall be in accordance with the LAMC Section 19.01B 1.

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)

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January 12, 2023

**VIA ONLINE SUBMISSION**

President Krekorian and Council Members,  
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**Re: Appeal of 216 S. Spring Street Project, Case No. DIR-2020-7846-DB-SPR-HCA, CEQA No. ENV-2020-7847-CE**

Dear President Krekorian, Council Members, Mr. Bertoni, and Ms. Cho:

On behalf of the Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”), we submit this appeal of the City Planning Commission’s January 5, 2023 approval of the 216 S. Spring Street Project (Case No. DIR-2020-7846-DB-SPR-HCA, ENV-2020-7847-CE) (“Project”), including the Director’s determination that the Project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to a Class 32 categorical exemption.<sup>1</sup>

On September 21, 2022, the City of Los Angeles (“City”) Director of Planning (“Director”) issued a, initial Letter of Determination (“LOD”) approving the Project. The LOD approved a Density Bonus and Site Plan Review, adopted Findings and Conditions of Approval, and determined that the Project is exempt from the CEQA pursuant to a Class 32 categorical exemption. On October 5, 2022, CREED LA appealed the Director’s decision to the City Planning Commission.<sup>2</sup> On December 13, 2022, CREED LA submitted comments responding to the City Planning

<sup>1</sup> CEQA Guidelines, Section 15332.

<sup>2</sup> **Attachment A**, Letter from CREED LA to City, Appeal of 216 S. Spring Street Project, Case No. DIR-2020-7846-DB-SPR-HCA, CEQA No. ENV-2020-7847-CE (October 5, 2022).

Department's staff report.<sup>3</sup> On December 15, 2022, the City Planning Commission conducted a hearing on CREED LA's appeal. At the hearing, CREED LA and members of the public provided oral comments in support of our appeal. On January 5, 2023, the Commission issued an LOD denying the appeal and approving the Project.<sup>4</sup>

CREED LA hereby appeals the City Planning Commission's denial of CREED LA's appeal and adoption of a categorical exemption to the City Council, pursuant to Los Angeles Municipal Code ("LAMC") Section 11.5.13(C). This letter supplements CREED LA's Appeal Application, filed concurrently herewith, and is accompanied by the required appeal fee.

As explained in the attached comments, the Commission abused its discretion and failed to proceed in the manner required by law by denying CREED LA's appeal and approving the Project in reliance on a categorical exemption and without substantial evidence to support the approval findings.<sup>5</sup>

To qualify for a categorical exemption, a lead agency must provide substantial evidence that the Project will not have a significant effect, and cannot rely on mitigation measures.<sup>6</sup> But as is explained in CREED LA's appeal and attached comments, the Project may result in potentially significant public health and noise impacts which require mitigation. Specifically, the Project's construction and operation may result in emissions of toxic air contaminants that would increase health risks to significant levels. CREED LA's air quality consultant concluded that mitigation measures are required to reduce this impact to less than significant levels. Additionally, Project construction and operation will include noise-generating activities that may result in significant noise impacts on nearby receptors – which the City improperly attempts to reduce through de facto mitigation measures. CREED LA's noise consultant concluded that these impacts are especially severe due to the proximity of residential receptors – four residential buildings are located within 500 feet of the Project site, including one diagonally adjacent to the Project site.<sup>7</sup> These impacts require mitigation. As a result, an EIR is the correct form of environmental review for the Project, not a categorical

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<sup>3</sup> **Attachment B**, Letter from CREED LA to City, re Agenda Item 7 – Appeal of 216 S. Spring Street Project, Case No. DIR-2020-7846-DB-SPR-HCA, CEQA No. ENV-2020-7847-CE (December 13, 2022).

<sup>4</sup> A copy of the LOD is provided with this Appeal via the City's online appeal portal.

<sup>5</sup> Code Civ. Proc. § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

<sup>6</sup> *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 269.

<sup>7</sup> Higgins Building, 108 W 2nd St, Los Angeles, CA 90012.

exemption. Due to these significant environmental and public health impacts, and the related failure to prepare the correct form environmental review, the City Planning Commission also abused its discretion in approving the Project's entitlements, including Site Plan Review and Density Bonus, in reliance on a deficient CEQA document.

Because the Commission abused its discretion and failed to proceed in the manner required by law, CREED LA respectfully requests that the City Council set a hearing on this appeal, uphold this appeal, vacate the Commission's approval of the Project, and direct staff to prepare an EIR for the Project.

## **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 City of Los Angeles residents Gerry Kennon, Chris Macias, and John Bustos, the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Los Angeles.

Individual members of CREED LA and its member organizations live, work, recreate and raise their families in the City of Los Angeles and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

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

CREED LA and its members are aggrieved by the Director's decision to approve the Project and adopt unsupported approval findings in reliance on a CEQA

exemption, without analyzing and mitigating the Project's potentially significant impacts in an EIR.

## II. STANDING TO APPEAL

CREED LA has standing to appeal the City's adoption of a categorical exemption to City Council. LAMC Section 11.5.13(C) provides that a Notice of Exemption can be appealed to City Council within 15 days of the Project approval becoming final, and all administrative appeals are exhausted. Specifically, the LAMC provides:

When any decision-maker in any action authorized by this Chapter, other than the City Council, certifies an environmental impact report, adopts a negative declaration, a mitigated negative declaration, or a sustainable communities environmental assessment; or determines that the Project subject to approval under this Chapter is not subject to CEQA, that certification, approval, or determination may be appealed to the City Council, provided that:

1. all administrative appeals of the Project approval were exhausted;
2. the appeal is filed with the Department of City Planning within 15 days of the Project approval becoming final; and
3. the appeal is filed in a form and manner required by the Department of City Planning.<sup>8</sup>

Here, CREED LA timely appealed the Director's decision to the City Planning Commission. CREED LA's appeal was denied by the Commission, and the LAMC does not provide for further appeal of the Project's Site Plan Review.<sup>9</sup> Thus, CREED LA exhausted all administrative appeals of the Project approval. Further appeal of the City's categorical exemption is permitted in LAMC Section 11.5.13(C). CREED LA's appeal to City Council is timely filed – within 15 days of the City Planning Commission's decision.

The LAMC provides that, upon the timely filing of an appeal, there shall be a stay on the Project approval and permits.<sup>10</sup> The time to act on any related Project approval shall be tolled until the appeal is decided by the City Council. The City Council shall hold a public hearing on the appeal within 75 days after the expiration of the appeal period or within any additional period mutually agreed

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<sup>8</sup> LAMC Section 11.5.13(C).

<sup>9</sup> LAMC Section 16.05.

<sup>10</sup> Section 11.5.13(D).

January 12, 2023  
Page 5

upon by the applicant and the City Council.<sup>11</sup> Notice of the hearing shall be given by mail at least ten days before the hearing.

### III. CONCLUSION

CREED LA respectfully requests that the City Council set a hearing on this appeal, uphold this appeal, vacate the Commission's approval of the Project, and direct staff to prepare an EIR for the Project.

Sincerely,



Aidan P. Marshall

Attachments  
APM:acp

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<sup>11</sup> Section 11.5.13(E)

# **ATTACHMENT A**



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October 5, 2022

### **VIA ONLINE SUBMISSION**

Commission President Ilissa Gold and Commission Members  
Central Area Planning Commission

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**Re: Appeal of 216 S. Spring Street Project, Case No. DIR-2020-7846-DB-SPR-HCA, CEQA No. ENV-2020-7847-CE**

Dear President Gold, Commission Members, Mr. Bertoni, and Ms. Lu:

On behalf of the Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”), we submit this appeal of the Director’s approval of the 216 S. Spring Street Project (Case No. DIR-2020-7846-DB-SPR-HCA, ENV-2020-7847-CE) (“Project”), including approval of Site Plan Review and Density Bonus pursuant to LAMC Sections 12.22 and 16.05, adoption of Findings and Conditions of Approval, and determination that the Project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to a Class 32 categorical exemption.<sup>1</sup>

On September 21, 2022, the City of Los Angeles (“City”) Director of Planning (“Director”) issued a Letter of Determination (“LOD”) approving the Project. The LOD approves a Density Bonus and Site Plan Review, adopts Findings and Conditions of Approval, and determines that the Project is exempt from the CEQA pursuant to a Class 32 categorical exemption.<sup>2</sup> The LOD indicates that the appeal period for the determination ends on October 6, 2022. This appeal is timely filed in compliance with the Los Angeles Municipal Code (“LAMC”).

<sup>1</sup> CEQA Guidelines, Section 15332.

<sup>2</sup> A copy of the LOD is attached to this Appeal.

October 5, 2022

Page 2

CREED LA hereby appeals the Director's approval of the Site Plan Review, Density Bonus, Findings and Conditions of Approval, and categorical exemption, as described in the LOD dated September 21, 2022. This letter supplements CREED LA's Appeal Application, filed concurrently herewith, and is accompanied by the required appeal fee.

The reasons for this appeal are set forth herein. Our appeal is supported by technical comments provided by air quality and hazards expert James Clark, Ph.D.,<sup>3</sup> and noise expert Jack Meighan.<sup>4</sup>

As explained herein and in the attached comments, the Director abused its discretion and failed to proceed in the manner required by law by approving the Project in reliance on a categorical exemption and without substantial evidence to support the approval findings.<sup>5</sup> To qualify for a categorical exemption, a lead agency must provide substantial evidence that the Project will not have a significant effect.<sup>6</sup> But as is explained below, the Project may result in potentially significant public health and noise impacts. Specifically, the Project's construction and operation may result in emissions of toxic air contaminants ("TACs") that would increase health risks to significant levels. And the Project's construction and operation includes noise-generating activities that may result in significant noise impacts on nearby receptors. These impacts are especially severe due to the proximity of residential receptors – four residential buildings are located within 500 feet of the Project site, including one diagonally adjacent to the Project site.<sup>7</sup> As a result, an EIR is the correct form of environmental review for the Project, not a categorical exemption. Due to these significant environmental and public health impacts, and the related failure to prepare the correct form environmental review, the Director also abused its discretion in approving the Site Plan Review and Density Bonus.

Because the Director abused its discretion and failed to proceed in the manner required by law, CREED LA respectfully requests that the City set a hearing on this appeal, and that the Area Planning Commission uphold this appeal,

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<sup>3</sup> Dr. Clark's technical comments and curriculum vitae are attached hereto as Exhibit A ("Clark Comments").

<sup>4</sup> Mr. Meighan's technical comments and curriculum vitae are attached hereto as Exhibit B ("Meighan Comments").

<sup>5</sup> Code Civ. Proc. § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

<sup>6</sup> *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 269.

<sup>7</sup> Higgins Building, 108 W 2nd St, Los Angeles, CA 90012.

vacate the Director's approval of the Project, and direct staff to prepare an EIR for the Project.

## I. STANDING TO APPEAL AND STATEMENT OF INTEREST

The Project's Site Plan Review can be appealed by "[t]he applicant, any officer, board, department, or bureau of the City, **or any interested person** aggrieved by the decision of the Director."<sup>8</sup> The Project's Density Bonus may also be appealed.<sup>9</sup>

CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. The coalition includes City of Los Angeles residents Gerry Kennon, Chris Macias, and John Bustos, the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Los Angeles.

Individual members of CREED LA and its member organizations live, work, recreate and raise their families in the City of Los Angeles and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

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

CREED LA and its members are aggrieved by the Director's decision to approve the Project and adopt unsupported approval findings in reliance on a CEQA

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<sup>8</sup> LAMC Section 16.05(H); *see* LAMC 12.22 A.25 (g)(2)(f); Section 12.36(c)(4) (collectively providing that the Central Area Planning Commission is the proper appellate body).

<sup>9</sup> LAMC Section 12.22 A.25 (g)(2)(f).

exemption, without analyzing and mitigating the Project's potentially significant impacts in an EIR.

## **II. THE PROJECT DOES NOT QUALIFY FOR A CLASS 32 CATEGORICAL EXEMPTION FOR INFILL DEVELOPMENT PROJECTS**

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR, except in certain limited circumstances.<sup>10</sup> The EIR is the very heart of CEQA.<sup>11</sup> “The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”<sup>12</sup>

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.<sup>13</sup> “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”<sup>14</sup> The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”<sup>15</sup>

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.<sup>16</sup> The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”<sup>17</sup> If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and

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<sup>10</sup> See, e.g., PRC § 21100.

<sup>11</sup> *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

<sup>12</sup> *Communities. for a Better Env. v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 (“*CBE v. CRA*”).

<sup>13</sup> 14 Cal. Code Regs. § 15002(a)(1).

<sup>14</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

<sup>15</sup> *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>16</sup> 14 CCR § 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at p. 564.

<sup>17</sup> 14 Cal. Code Regs. §15002(a)(2).

that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”<sup>18</sup>

Under CEQA, mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments.<sup>19</sup> A CEQA lead agency is precluded from making the required CEQA findings to approve a project unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved. For this reason, an agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>20</sup> This approach helps “ensure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”<sup>21</sup>

CEQA identifies certain classes of projects which are exempt from the provisions of CEQA, called categorical exemptions.<sup>22</sup> Categorical exemptions apply to certain narrow classes of activities that generally do not have a significant effect on the environment.<sup>23</sup> “Thus an agency’s finding that a particular proposed project comes within one of the exempt classes necessarily includes an implied finding that the project has no significant effect on the environment.”<sup>24</sup> “It follows that where there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper.”<sup>25</sup>

CEQA exemptions must be narrowly construed and are not to be expanded beyond the scope of their plain language.<sup>26</sup> They should not be construed so broadly as to include classes of projects that do not normally satisfy the requirements for a categorical exemption.<sup>27</sup> Erroneous reliance by a lead agency on a categorical exemption constitutes a prejudicial abuse of discretion and a violation of CEQA.<sup>28</sup> “[I]f the court perceives there was substantial evidence that the project might have

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<sup>18</sup> PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

<sup>19</sup> CEQA Guidelines, § 15126.4, subd. (a)(2).

<sup>20</sup> *Kings County Farm Bureau v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).

<sup>21</sup> *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

<sup>22</sup> PRC § 21084(a); 14 CCR §§ 15300, 15354.

<sup>23</sup> PRC § 21084(a); 14 CCR §§ 15300, 15354; *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380.

<sup>24</sup> *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 115.

<sup>25</sup> *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1191 (“*Azusa Land Reclamation*”), quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205–206.

<sup>26</sup> *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257.

<sup>27</sup> *Azusa Land Reclamation* (1997) 52 Cal.App.4th 1165, 1192.

<sup>28</sup> *Azusa*, 52 Cal.App.4th at 1192.

an adverse impact, but the agency failed to secure preparation of an EIR, the agency's action must be set aside because the agency abused its discretion by failing to follow the law."<sup>29</sup>

To qualify for a categorical exemption, a lead agency must provide "substantial evidence to support [its] finding that the Project will not have a significant effect."<sup>30</sup> "Substantial evidence" means 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. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency.<sup>31</sup> If a court locates substantial evidence in the record to support the agency's conclusion, the agency's decision will be upheld.<sup>32</sup> If, however, the record lacks substantial evidence, as here, a reviewing court will not uphold an exemption determination.

Section 15332 of the CEQA Guidelines provides an exemption from CEQA for projects characterized as in-fill development meeting the conditions:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

CEQA also contains several exceptions to categorical exemptions. In particular, a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to "unusual circumstances,"<sup>33</sup> or where there is a reasonable

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<sup>29</sup> *Dunn-Edwards Corp. v. Bay Area Air Quality Mgmt. Dist.* (1992) 9 Cal.App.4th 644, 656).

<sup>30</sup> *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 269.

<sup>31</sup> CEQA Guidelines § 15384.

<sup>32</sup> *Bankers Hill Hillcrest*, 139 Cal.App.4th at 269.

<sup>33</sup> 14 CCR § 15300.2(c).

possibility that the activity will have a significant effect on the environment, including (1) when “the cumulative impact of successive projects of the same type in the same place, over time is significant.”<sup>34</sup> An agency may not rely on a categorical exemption if to do so would require the imposition of mitigation measures to reduce potentially significant effects.<sup>35</sup>

Here, the Class 32 Exemption and any other CEQA exemption are inapplicable to the Project due to its significant effects on air quality, health risk and noise.<sup>36</sup>

**A. A CEQA Exemption is Inapplicable Because the Project May Result in Significant Effects Related to Air Quality and Health Risk**

**1. The City Lacks Substantial Evidence to Conclude that the Project’s Health Risk Impacts from Air Emissions are Less Than Significant**

The City lacks substantial evidence to support its reliance on an exemption because the City failed to analyze the health risk impacts of Project construction and operation to workers and nearby sensitive receptors.

The Project would increase health risks in the surrounding community by contributing TACs such as Diesel Particulate Matter (“DPM”) during construction.<sup>37</sup> During the Project’s construction, heavy equipment and diesel trucks would emit DPM, and during operations, the Project’s backup generator would emit DPM. DPM has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.<sup>38</sup> The Project’s emissions of DPM would impact numerous sensitive receptors, including residents in four residential buildings located within 500 feet of the Project site.<sup>39</sup>

CEQA requires analysis of human health impacts. As the LOD acknowledges, CEQA Guidelines Section 15065(a)(4) provides that the City is required to find a project will have a significant impact on the environment and require an EIR if the environmental effects of a project will cause a substantial adverse effect on human

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<sup>34</sup> 14 CCR § 15300.2(b).

<sup>35</sup> *Salmon Pro. & Watershed Network v. County of Marin* (“SPAWN”) (2004) 125 Cal.App.4th 1098, 1198-1201.

<sup>36</sup> The Project’s significant effects also create exceptions to an exemption under 14 CCR § 15300.2(b), (c).

<sup>37</sup> Clark Comments, pg. 5.

<sup>38</sup> Clark Comments, pg. 3-5.

<sup>39</sup> Categorical Exemption, pg. 65.

beings.<sup>40</sup> The Supreme Court has also explained that CEQA requires the lead agency to disclose the health consequences that result from exposure to a project's air emissions.<sup>41</sup>

For development projects like this one, the Office of Environmental Health Hazard Assessment's ("OEHHA") risk assessment guidelines recommend a formal health risk analysis ("HRA") for short-term construction exposures to TACs lasting longer than 2 months and exposures from projects lasting more than 6 months should be evaluated for the duration of the project.<sup>42</sup> In an HRA, lead agencies must first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern.<sup>43</sup> Following that analysis, then the City can make a determination of the relative significance of the emissions.

The City did not conduct this analysis. Here, the City concludes that the Project would not result in significant health risk impacts without conducting any of the above analytical steps. The City fails to disclose or analyze that the Project's construction and operation would result in emissions of TACs. And the City fails to disclose or analyze the health impacts of exposure to certain concentrations of TACs. And the City fails to quantify the magnitude of TACs emitted by the Project, and fails to model the concentration of TACs at sensitive receptors.<sup>44</sup> In sum, there is no evidence in the Justification to Support a Categorical Exemption ("Categorical Exemption")<sup>45</sup> that the City considered health risks from TACs when determining that the Project qualifies for a categorical exemption.

The City reasons that because the Project's emissions would not exceed Localized Significance Thresholds ("LSTs"), there would not be a significant health risk. LSTs are based on the number of pounds of emissions per day that can be

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<sup>40</sup> LOD, p. 12, citing 14 CCR § 15065(a)(4); PRC § 21083(b)(3), (d).

<sup>41</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 523.

<sup>42</sup> Office of Environmental Health Hazard Assessment (OEHHA), Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, February 2015 (OEHHA 2015), Section 8.2.10: Cancer Risk Evaluation of Short Term Projects, pp. 8-17/18; <https://oehha.ca.gov/air/crnrr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>.

<sup>43</sup> *Id.*

<sup>44</sup> The City's failure to analyze the magnitude and concentration of the Project's TACs also conflicts with the OEHHA recommendations for HRAs. The OEHHA guidelines recommend an HRA be prepared for this Project's construction and operation because its 24-month construction schedule exceeds 2 months, and its operations would last over 6 months.

<sup>45</sup> City of Los Angeles Planning Department, Justification to Support a Categorical Exemption (September 21, 2022).



generated by a project that would cause or contribute to adverse localized air quality impacts.<sup>46</sup> But LSTs only apply to four pollutants: NO<sub>x</sub>, CO, PM<sub>10</sub>, and PM<sub>2.5</sub>. Dr. Clark explains that LSTs do not apply to DPM and other TACs.<sup>47</sup> Therefore, the City completely failed to analyze health risk impacts from exposure to TACs during Project construction, and thus fails to support its finding of a less-than-significant health risk impact.

## **2. The Project Has Potentially Significant Health Risk Impacts**

Dr. Clark calculates that the Project's emissions of DPM would exceed applicable significance thresholds for health risk.

Using OEHHA's HARP 2 Standalone Risk software, Dr. Clark calculated the cancer risk to the most sensitive population – infants less than 2 years old.<sup>48</sup> The cumulative risk for exposure during the 2 years of construction is 814 in 1,000,000, much greater than the 10 in 1,000,000 threshold set forth by the South Coast Air Quality Management District ("SCAQMD"). For adults, the risk from exposure to DPM from the construction phase of the project is 17.5 in 1,000,000, which also exceeds the threshold.<sup>49</sup>

As a result of these significant effects, the Project does not qualify for any CEQA exemption, including a Class 32 exemption. The Project's significant impacts must be disclosed and mitigated in an EIR.

## **3. Project Impacts Associated with Operational Diesel Exhaust from the Backup Generator May be Significant**

The City lacks substantial evidence to support its reliance on a categorical exemption because the City failed to adequately analyze the health risk impacts associated with use of the Project's backup generator during Project operation.

Dr. Clark explains that diesel-powered backup generators emit DPM, which poses a public health risk. The City's air quality analysis assumes that the backup generator will only be operated for 12 hours a year for testing and maintenance.<sup>50</sup> But according to SCAQMD Rules 1110.2 and 1470, backup generators are allowed

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<sup>46</sup> Categorical Exemption, pg. 66.

<sup>47</sup> Clark Comments, pg. 3.

<sup>48</sup> Clark Comments, pg. 7.

<sup>49</sup> Clark Comments, pg. 7-8.

<sup>50</sup> Clark Comments, pg. 11.

to operate for up to 200 hours per year and maintenance cannot exceed more than 50 hours per year. Thus, the Project's back-up generator is permitted to operate up to 250 hours per year. As a result, the City's assumption that the backup generator would be operated for 12 hours a year likely underestimates the Project's emissions.<sup>51</sup>

Dr. Clark further explains that the City's analysis underestimates emissions because use of emergency generators is expected to rise due to climate change and increased instances of Public Safety Power Shutoff ("PSPS") events and extreme heat events.<sup>52</sup> For every PSPS or Extreme Heat Event triggered during the operational phase of the project, significant concentrations of DPM will be released that are not accounted for in the City's analysis, which only assumes the backup generator will be used 12 hours a year for testing and maintenance.

In sum, the City's operational health risk conclusions are not supported by substantial evidence because the City's analysis does not reflect reasonable hours of use of backup generators.

Dr. Clark generated a site-specific screening level HRA for emissions from the back-up generator to assess the health risk impacts on nearby receptors.<sup>53</sup> Assuming the backup generator is limited to maintenance and testing for 12 hours per year or less, the model calculates emissions of DPM of approximately 1.07 lbs per year. This magnitude of emissions results in health risk impacts of 17.3 in 1,000,000 for residents living within 25 meters of the Project site (the nearest residential receptors for this Project are located diagonally adjacent to the Project site).<sup>54</sup> This impact exceeds the 10 in 1,000,000 threshold set forth by SCAQMD, resulting in a significant impact.

Because the Project has a potentially significant health risk impact, the City cannot rely on a categorical exemption. An EIR must be prepared to analyze impacts on sensitive receptors.

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<sup>51</sup> Clark Comments, pg. 8.

<sup>52</sup> Clark Comments, pg. 9.

<sup>53</sup> Clark Comments, pg. 10.

<sup>54</sup> Higgins Building, 108 W 2nd St, Los Angeles, CA 90012.

**B. An Exemption is Inapplicable Because the Project May Result in Significant Noise Impacts Which Require Mitigation**

**1. The Class 32 Exemption is Inapplicable Because the City Improperly Relies on Noise Mitigation Measures**

The Notice of Exemption states that the Project would result in less-than-significant construction noise impacts. According to the Categorical Exemption, the Project's construction noise impacts are significant if they exceed 75 dBA at a distance of 50 feet from the Project site,<sup>55</sup> and would not exceed ambient noise levels by more than 5 dBA at nearby sensitive receptors.<sup>56</sup> In Table 10, the City presents the estimated construction noise impact at the nearest sensitive receptors, and concludes that neither of these significance thresholds are met.<sup>57</sup> But the City incorrectly incorporates noise reductions from mitigation measures – labeled “project design features”<sup>58</sup> – into this significance determination. The City's noise reductions include (1) avoiding conducting demolition and construction activities concurrently, (2) using noise-muffled equipment, (3) implementing a sound barrier at least 8 feet tall that achieves a minimum 15 dBA noise reduction, and (4) using portable barriers during jackhammering and structural framing.<sup>59</sup> These measures are intended to reduce the Project's construction noise levels to less than significant, and are therefore mitigation within the meaning of CEQA.

An agency may not rely on a categorical exemption if to do so would require the imposition of mitigation measures to reduce potentially significant effects.<sup>60</sup> In *Salmon Pro. & Watershed Network v. County of Marin* (“SPAWN”), the court held that a single-family residence was improperly approved pursuant to a categorical exemption because the project included mitigation of the project's impacts on a stream.<sup>61</sup> The lead agency concluded that the project was categorically exempt from CEQA because it entailed construction of a single-family residence with no potentially significant impacts on the environment. The agency's conclusion that the project would not result in adverse effects was founded on “dozens of conditions that have been applied to enhance mitigations and reduce to a minimum the possibility of any adverse environmental impacts.”<sup>62</sup> The conditions included detailed

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<sup>55</sup> See LAMC Section 112.05.

<sup>56</sup> See LAMC Section 112.04; Categorical Exemption, pg. 61.

<sup>57</sup> Categorical Exemption, pg. 61.

<sup>58</sup> Categorical Exemption, pg. 57.

<sup>59</sup> Categorical Exemption, pg. 57-58.

<sup>60</sup> *Salmon Pro. & Watershed Network v. County of Marin* (“SPAWN”) (2004) 125 Cal.App.4th 1098, 1198-1201.

<sup>61</sup> *Id.* at 1103.

<sup>62</sup> *Id.* at 1107.

construction limitations and incorporation of a riparian protection plan. The riparian protection plan acknowledged that runoff from new rooftops and driveways can erode stream banks, and proposed drainage features for erosion and sediment control. The court held that these conditions were mitigation measures, and that eligibility for a categorical exemption must be determined without reference to mitigation measures. Thus, the categorical exemption was inapplicable.

In *Lotus v. Department of Transportation*,<sup>63</sup> the court addressed the adequacy of an EIR analyzing proposed highway construction adjacent to old-growth redwood trees, as opposed to the approval of a categorical exemption as was the case in *SPAWN*.<sup>64</sup> Like the project in *SPAWN*, however, the *Lotus* construction was found by the reviewing agency not to involve any significant effect on the environment, but only after mitigation measures were made a condition of project approval.<sup>65</sup> The court held that actions such as restorative planting, removal of invasive plants, and the use of an arborist and specialized equipment were “plainly mitigation measures and not part of the project itself,” resulting in the improper compression of environmental impacts and mitigation measures into a single issue in the EIR.<sup>66</sup>

Here, the instant Project is ineligible for a categorical exemption for the same reason the project in *SPAWN* was ineligible. In both cases, the lead agency’s conclusion that the project would not result in adverse effects was founded on “conditions that have been applied to enhance mitigations and reduce to a minimum the possibility of any adverse environmental impacts.”<sup>67</sup> Just as the project in *SPAWN* “detailed construction limitations and incorporation of a riparian protection plan” designed to mitigate impacts from runoff, the instant Project includes noise-reducing construction techniques and devices to mitigate construction noise impacts. Per the court’s ruling in *SPAWN*, the Project’s noise-reducing measures must be considered mitigation measures. Eligibility for a categorical exemption must be determined without reference to mitigation measures. Thus, the Project’s categorical exemption is inapplicable.

And per the *Lotus* decision, the Project is ineligible for a categorical exemption because its mitigation measures are not part of the project design. The Project’s measures to reduce construction noise are similar to the plant techniques in *Lotus* because they are designed to mitigate the Project’s adverse impacts, and are not part of the Project itself. Mitigation of construction noise is not part of the

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<sup>63</sup> 223 Cal.App.4th 645,

<sup>64</sup> *Id.* at 647–648.

<sup>65</sup> *Id.* at 648–649.

<sup>66</sup> *Id.* at 656, fn. 8.

<sup>67</sup> *SPAWN*, 125 Cal.App.4th 1098, 1107.

Project design because the Project proposes a mixed-use building – noise-reducing devices and techniques merely reduce noise caused by construction of that building. Thus, the categorical exemption is inapplicable.

The City may attempt to rely on cases such as *Citizens for Environmental Responsibility v. State ex rel. 14th District Agricultural Association* (“*CER v. State*”),<sup>68</sup> *Berkeley Hills Watershed Coalition v. City of Berkeley* (“*Berkeley Hills Watershed*”),<sup>69</sup> or *Berkeley Hillside Preservation v. City of Berkeley* (“*Berkeley Hillside Preservation*”)<sup>70</sup> to assert that the Project’s noise mitigation does not preclude reliance on an exemption. However, as discussed below, these cases are distinguishable from the instant Project.

In *CER v. State*,<sup>71</sup> the court held that a rodeo project was not precluded from a categorical exemption by its reliance on a manure mitigation plan (“MMP”) to prevent riparian impacts. The court distinguished the MMP from the mitigation in *SPAWN* because the MMP was not a new measure proposed for or necessitated by the rodeo project.<sup>72</sup> Rather, it was a preexisting measure previously implemented to address a preexisting concern, which was formalized in writing before the rodeo project was proposed. Thus, the MMP was actually part of the ongoing “normal operations” of the fairground at which the rodeo project was located. The court concludes that use of this measure did not disqualify the rodeo project from a categorical exemption.<sup>73</sup>

In *Berkeley Hills Watershed*,<sup>74</sup> the court held that a housing project was not precluded from an exemption by its reliance on project design measures to address State requirements for investigation and mitigation within a seismic zone.<sup>75</sup> The geotechnical report prepared for the project stated “[a]ll owners or occupants of homes on hillsides should realize that landslide movements are always a possibility, although generally the likelihood is very low that such an event will occur,” and recommended suggestions for removing and controlling the landslide.<sup>76</sup> The court explained these measures were not “mitigation measures” because they were developed as part of the project design to meet building code requirements for properties located in seismic zones and address preexisting conditions on the site as

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<sup>68</sup> (2015) 242 Cal.App.4th 555.

<sup>69</sup> (2019) 31 Cal.App.5th 880

<sup>70</sup> (2015) 241 Cal.App.4th 943.

<sup>71</sup> (2015) 242 Cal.App.4th 555.

<sup>72</sup> *Id.* at 569.

<sup>73</sup> *Id.*

<sup>74</sup> (2019) 31 Cal.App.5th 880

<sup>75</sup> *Id.* at 246, fn 9.

<sup>76</sup> *Id.* at 246

opposed to being “proposed subsequent actions by the project’s proponent to mitigate or offset the alleged adverse environmental impacts” of the project.

In *Berkeley Hillside Preservation*,<sup>77</sup> the court rejected an argument that implementation of a traffic-management plan for project construction precluded a categorical exemption. When the lead agency approved the use permit for the project, it included various conditions under Berkeley Municipal Code, including a construction traffic management plan.<sup>78</sup> The court stressed that the conditions of approval for this project were standard conditions imposed on residential development which are not intended to address any specific environmental impacts resulting from construction of this project.<sup>79</sup> This point was supported by the fact that no unique conditions of approval were proposed for the project (aside from one that had no relation to any potential environmental impact).<sup>80</sup> The court held that because “the plan [...] is not proposed subsequent action taken to mitigate any significant effect of the project, [it is] therefore is not a mitigation measure that precludes the application of a categorical exemption.”<sup>81</sup>

This Project is distinguishable from *CER v. State* because the Project’s construction noise measures do not preexist the Project. Whereas the mitigation plan in *CER v. State* was part of the ongoing “normal operations” of the fairground at which the rodeo project was located “for decades,”<sup>82</sup> the noise measures in this case were first proposed in the Categorical Exemption. This fact completely distinguishes this project, as the court italicized the word “proposed” throughout the opinion to emphasize the importance of that factor. Indeed, the Project’s construction noise measures are proposed – they are not specifically described or required by any preexisting policy. For example, although LAMC Sections 112.04 and 112.05 set out the applicable construction noise thresholds, they do not call for the specific combination of noise reducing techniques and devices proposed to mitigate the Project’s particular construction activities.

This Project is also distinguishable from *Berkeley Hills Watershed* because the measures in *Berkeley Hills Watershed* addressed preexisting conditions on the site – the seismic conditions of the project site – whereas the instant Project’s noise measures address impacts *generated by* the Project. And whereas the *Berkeley Hills Watershed* measures were integrated into the design of the building, this Project’s

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<sup>77</sup> (2015) 241 Cal.App.4th 943.

<sup>78</sup> *Id.* at 959.

<sup>79</sup> *Id.*

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

<sup>81</sup> *Id.* at 961.

<sup>82</sup> 242 Cal.App.4th 555, 566.

construction noise mitigation is not integrated into the design of the apartment building. Instead, the Project's mitigation is designed to resolve its adverse construction noise impacts. Thus, although both projects involve measures designed to meet regulatory requirements – the project in *Berkeley Hills Watershed* aimed to comply with the building code, and here, the Project aims to comply with LAMC noise thresholds – the instant Project is ineligible for a categorical exemption because it mitigates impacts generated by the Project itself.

Finally, this Project is distinguishable from *Berkeley Hillside Preservation*.<sup>83</sup> Whereas the conditions of approval in that case were of standard language, general applicability, and were not designed to mitigate specific adverse impacts, the measures for this Project are bespoke measures designed to mitigate specific construction noise impacts. For instance, the proposed 8-foot-tall sound barrier that reduces noise by 15 dBA is not a preexisting condition of general applicability – it is a unique measure tailored to address the Project's acknowledged noise impacts – the Categorical Exemption acknowledges the Project would require use of heavy equipment that would generate noise of up to 90 dBA at 50 feet.<sup>84</sup> The Project subsequently identifies a combination of mitigation measures to reduce these impacts below LAMC thresholds. Therefore, the Project is precluded from a categorical exemption.

## **2. The Project's Noise Mitigation Measures Do Not Effectively Mitigate Potentially Significant Construction Noise Impacts**

As explained above, the Categorical Exemption states that the Project would not exceed LAMC thresholds<sup>85</sup> due to implementing measures including a sound barrier at least 8 feet tall that achieves a minimum 15 dBA noise reduction, and using portable barriers during jackhammering and structural framing.<sup>86</sup> Mr. Meighan notes that the City's noise calculations incorporate a 15 dBA noise reduction on account of the sound barrier.<sup>87</sup> But Mr. Meighan explains that this barrier would not provide line of sight shielding for sensitive receptors on the second floors and above of neighboring buildings.<sup>88</sup> He states that “assuming the barrier is 8 feet high, receivers on the second floor or above would be able to look

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<sup>83</sup> (2015) 241 Cal.App.4th 943.

<sup>84</sup> Categorical Exemption, pg. 59, Table 9.

<sup>85</sup> See LAMC Section 112.04; Categorical Exemption, pg. 61.

<sup>86</sup> Categorical Exemption, pg. 57-58.

<sup>87</sup> Meighan Comments, pg. 5.

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

directly over the barrier onto the property and receive no benefit from the shielding effects.”<sup>89</sup>

Mr. Meighan conducted a calculation of the Project’s potential construction noise impacts on 3<sup>rd</sup> floor receptors using the Roadway Construction Noise Model (“RCNM”), finding that the Project’s construction noise impacts exceed the City’s 5 dBA threshold.

**Table 1: Impact Analysis for Worst-case Construction Scenario on the 3<sup>rd</sup> Floor of the Higgins Building<sup>90</sup>**

Calculated Noise Level (dBA)	Ambient Noise Level (dBA)	Level Above Ambient (dBA)	Impact Threshold (dBA)	Impact?
79.1	61.3	17.8	>5	YES

Mr. Meighan’s analysis constitutes substantial evidence demonstrating that the Project may cause a significant construction noise impact. Therefore, the Project does not qualify for a categorical exemption.<sup>91</sup> The Project’s significant impacts must be disclosed and mitigated in an EIR.

### **3. The City’s Analysis of Operational and Construction Noise Impacts Are Not Supported by Substantial Evidence**

To qualify for a categorical exemption, a lead agency must provide “substantial evidence to support [its] finding that the Project will not have a significant effect.”<sup>92</sup> The City bases its noise analysis on a flawed and unsupported analysis. As a result, its conclusions that the Project’s noise impacts are less than significant are not supported by substantial evidence.

First, the City fails to adequately establish the baseline noise level. As numerous courts have held, an agency’s failure to adequately describe the existing setting contravenes the fundamental purpose of the environmental review process, which is to determine whether there is a potentially substantial, adverse change compared to the existing setting.<sup>93</sup> Here, the noise analysis relies on a short-term

<sup>89</sup> *Id.*

<sup>90</sup> Meighan Comments, pg. 5, Table 2.

<sup>91</sup> *See Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 269.

<sup>92</sup> *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 269.

<sup>93</sup> *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.



measurement of 15-minute duration during the day to describe existing conditions. Mr. Meighan explains that, in order to conduct a proper noise analysis, the baseline must also be established for evening, and possibly nighttime conditions.<sup>94</sup> Social events in the roof deck terrace with pool and lounge spaces could occur during evening hours, and rooftop equipment could also operate during evening and nighttime conditions. Without this data, it is not possible to evaluate the significance of noise sources operating during non-daytime hours.

Another flaw Mr. Meighan detected is that the City's analysis assumes only the two loudest pieces of equipment is used per stage of construction, measured at the center of the project site.<sup>95</sup> He explains that this approach may underestimate the Project's noise impacts, which are greater than disclosed by the City when construction equipment is used closer to the borders of the Project site.

Mr. Meighan also explains that the Categorical Exemption erroneously cites an expectation that the Project's HVAC equipment would not cause significant impacts because the HVAC equipment would be similar to equipment on the currently existing building.<sup>96</sup> Mr. Meighan shows that the mechanical units required for a 17-story mixed-use building will likely be larger and louder than a two-story commercial building.

Mr. Meighan states that the Categorical Exemption does not mention whether the Project would use pile driving during construction.<sup>97</sup> He explains that pile driving is a preferred construction technique for large buildings like this, and has the potential for damage to neighboring buildings. A categorical exemption cannot be relied upon if the Project can elect to use pile driving.

Finally, as explained in the preceding section, the Project's proposed sound barriers would not achieve the City's claimed 15 dBA reduction on neighboring residences above the ground floor. The City's reliance on the 15 dBA construction noise reduction violates CEQA's principle against relying on mitigation measures of uncertain efficacy or feasibility.<sup>98</sup> As a result, the City's finding of a less-than-significant construction noise impact is not supported by substantial evidence.

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<sup>94</sup> Meighan Comments, pg. 1.

<sup>95</sup> Meighan Comments, pg. 5.

<sup>96</sup> Categorical Exemption, pg. 63; Meighan Comments, pg. 6.

<sup>97</sup> Meighan Comments, pg. 6.

<sup>98</sup> *Kings County Farm Bureau v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).

Due to these analytical flaws, the City's noise findings are not supported by substantial evidence. Without substantial evidence, the City cannot rely on a categorical exemption.

#### **4. The City's Noise Significance Thresholds Are Not Supported by Substantial Evidence**

The Project's operational noise significance thresholds are not supported by substantial evidence because they do not reflect sleep disturbance impacts. The Project includes several sources of potential sleep-disturbing operational noise impacts: the balconies and rooftop area; mechanical equipment including an HVAC; and roadway traffic noise. Compliance with the significance thresholds for these noise impacts does not constitute substantial evidence that sleep disturbance impacts are less-than-significant.

Courts have held that compliance with noise regulations alone is not substantial evidence of a less-than-significant impact.<sup>99</sup> In *Oro Fino Gold Mining Corp. v. County of El Dorado* ("Oro Fino"),<sup>100</sup> a mining company applied for a special use permit for drilling holes to explore for minerals.<sup>101</sup> The mining company argued the proposed mitigated negative declaration prohibited noise levels above the applicable county general plan noise standard maximum of 50 dBA and, therefore, there could be no significant noise impact. The court rejected this argument: "we note that conformity with a general plan does not insulate a project from EIR review where it can be fairly argued that the project will generate significant environmental effects."<sup>102</sup> Thus, the court concluded an EIR was required.

In *Citizens for Responsible & Open Government v. City of Grand Terrace* ("Grand Terrace"),<sup>103</sup> the city approved a 120-unit senior housing facility based on a mitigated negative declaration.<sup>104</sup> The noise element of the city's general plan stated exterior noise levels in residential areas should be limited to 65 dB

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<sup>99</sup> *King & Gardiner Farms, LLC v. Cnty. of Kern* (2020) 45 Cal.App.5th 814, 865.

<sup>100</sup> (1990) 225 Cal.App.3d 872.

<sup>101</sup> *Id.* at pg. 876; see also *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714; *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1338; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416 (project's effects can be significant even if "they are not greater than those deemed acceptable in a general plan"); *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354, ("CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan").

<sup>102</sup> *Id.* at pp. 881–882.

<sup>103</sup> (2008) 160 Cal.App.4th 1323.

<sup>104</sup> *Id.* at 1327.

CNEL.<sup>105</sup> The initial study concluded the facility's air conditioner units would cause noise impacts, but with mitigating measures the project would operate within the general plan's noise standard. But the court cited *Oro Fino* for the principle that “conformity with a general plan does not insulate a project from EIR review where it can be fairly argued that the project will generate significant environmental effects.”<sup>106</sup> A citizen’s group provided substantial evidence supporting such a fair argument. This evidence included testimony from an individual in the HVAC industry that the type of air conditioning units proposed by the project “sound like airplanes.”<sup>107</sup> And at a city council public hearing, community and city council members expressed concern that the air conditioners would be noisy.<sup>108</sup> The court considered the testimony about the noise generated by the proposed air conditioners, took into account the mitigation measures, and concluded “there is substantial evidence that it can be fairly argued that the Project may have a significant environmental noise impact.”<sup>109</sup>

Here, the significance threshold for the Project’s mechanical equipment noise impacts is contained in LAMC Section 112.02, which prohibits noise from mechanical equipment, including HVACs, from exceeding 5 decibels at receptors. The Categorical Exemption states that operational traffic noise would be less-than-significant if it would be less than 3 dBA.<sup>110</sup> The City states that adherence to LAMC Section 116.01 is the only applicable criterion for assessing noise impacts from the Project’s open space. LAMC Section 116.01 provides: “it shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary, and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.”

These significance thresholds do not address the Project’s potential for sleep disturbance at nearby residential receptors. The World Health Organization (“WHO”) identifies a guidance of 45 dBA Leq (outdoors) to avoid sleep disturbance from a continuous source, and a limit of 60 dBA Lmax for intermittent sources.<sup>111</sup> The significance thresholds summarized above do not necessarily consider noise impacts at WHO levels significant, nor otherwise address potential sleep disturbance impacts. Further, the City’s significance thresholds do not identify the unique impacts of speakers on sleep: low frequency bass notes can cause significant

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<sup>105</sup> *Grand Terrace*, 160 Cal.App.4th at 1338.

<sup>106</sup> *Grand Terrace*, *supra*, at pg. 1338.

<sup>107</sup> *Id.* at 1338-1339.

<sup>108</sup> *Id.* at 1338.

<sup>109</sup> *Id.* at p. 1341.

<sup>110</sup> Categorical Exemption, pg. 64.

<sup>111</sup> Meighan Comments, pg. 4.

impacts even when the A-weighted level complies with applicable code. This occurs because low frequency bass notes pass through exterior walls and closed windows with little reduction.<sup>112</sup> Accordingly, other agencies, such as the City of San Francisco, limit low frequency noise increase from this type of use on a C-weighted basis.<sup>113</sup>

The Project has potentially significant sleep disturbance impacts on nearby residential receptors. The Project includes 12,692 sf of open space, a majority of which would be concentrated on the 4,237 sf roof deck.<sup>114</sup> Noise would potentially be generated by the up to 60 people that are accommodated on the roof deck. Noise would also potentially be generated by speakers on the roof deck or other open spaces. The Categorical Exemption states that while speakers on the roof deck are not anticipated, there is no condition precluding their use. Thus, there is the potential for low-frequency bass notes to disturb sleep. Accordingly, the Categorical Exemption acknowledges that occupancy of the Project's open spaces may increase ambient noise near the Project site.<sup>115</sup> Mr. Meighan also states that excessive noise from these rooftop activities occurring between 10 PM and 7 AM could cause sleep disturbance and would be potentially significant.<sup>116</sup>

In sum, the City's operational noise thresholds do not account for the Project's potential sleep disturbance impacts. Thus, the City lacks the substantial evidence necessary to rely on a categorical exemption.

### **III. The Director's Approval of the Project's Site Plan Review Was Contrary to Law and Unsupported by Substantial Evidence**

The Director erroneously approved a Site Plan Review for the Project pursuant to LAMC Section 16.05 without substantial evidence to support the required findings. This approval requires making certain environmental findings. LAMC Sec. 16.05(A) provides that:

The purposes of site plan review are to promote orderly development, **evaluate and mitigate significant environmental impacts**, and promote public safety and the general welfare by ensuring that development projects are properly related to their sites, surrounding properties, traffic circulation, sewers, other infrastructure and environmental setting; and to **control or**

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<sup>112</sup> *Id.*

<sup>113</sup> Meighan Comments, pg. 4.

<sup>114</sup> Categorical Exemption, pg. 63.

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

<sup>116</sup> Meighan Comments, pg. 4.

**mitigate the development of projects which are likely to have a significant adverse effect on the environment** as identified in the City's environmental review process, or on surrounding properties by reason of inadequate site planning or improvements. [emphasis added]

LAMC Sec. 16.05(E) further provides that:

- a. In granting site plan approval, the Director may condition and/or modify the project, or select an alternative project, as he or she deems necessary to implement the general or specific plan and to mitigate significant adverse effects of the development project on the environment and surrounding areas.
- b. The Director **shall not approve or conditionally approve a site plan review for a development project unless an appropriate environmental review clearance has been prepared in accordance with the requirements of CEQA.** [emphasis added]

Here, the purposes of site plan review set forth by LAMC Sec. 16.05(A) have not been fulfilled, as the Project's environmental document failed to adequately evaluate and mitigate significant environmental impacts. Further, the appropriate environmental review clearance has not been prepared in accordance with the requirements of CEQA, in violation of LAMC Sec. 16.05(E). As explained above, the appropriate environmental clearance is an EIR, not a categorical exemption. Further, the analysis conducted in the categorical exemption contained flaws in violation of CEQA, as shown in these comments. The findings adopted by the Director in support of the Project's Site Plan Review approval were not supported by substantial evidence, and were therefore contrary to law.<sup>117</sup> The Commission must vacate the Director's approval of the Project's site plan review.

#### **IV. The Director's Approval of the Density Bonus Was Contrary to Law and Unsupported by Substantial Evidence**

The Director erroneously approved a Density Bonus for the Project pursuant to LAMC Section 12.22 A.25 without substantial evidence to support the required findings. The LAMC provides that the Director is prohibited from approving a Density Bonus if there is substantial evidence demonstrating that:<sup>118</sup>

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<sup>117</sup> Code Civ. Proc § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

<sup>118</sup> Section 12.22 A.25(g)(2)(i)(c).

- (i) The Incentive is not required in order to provide for affordable housing costs as defined in California Health and Safety Code Section 50052.5, or Section 50053 for rents for the affordable units; or
- (ii) The Incentive will have a Specific Adverse Impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the Specific Adverse Impact without rendering the development unaffordable to Very Low, Low and Moderate Income households. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

The Findings state that there is no evidence that the density bonus incentive would have a specific adverse impact. This conclusion is unsupported because the City failed to quantify the health risk from the Project's air emissions on nearby sensitive receptors, and failed to accurately analyze noise impacts. The Director's conclusion is also erroneous, as the analysis presented in this letter shows that, when calculated, the Project will cause potentially significant and unmitigated health risk and noise impacts. These impacts are heightened due to the Project's density bonus: the requested increase in FAR allows the Applicant to expand the building envelope so that additional units can be constructed.<sup>119</sup> The FAR increase allows the Project to construct an additional 26,856 sf.<sup>120</sup> The increased size of the Project results in a longer construction period, which extends the duration of the Project's construction noise and emissions. Since this letter demonstrates that these emissions are potentially significant, this Finding was contrary to law and lacks the support of substantial evidence.

## V. CONCLUSION

CREED LA respectfully requests that the City set a hearing on this appeal, and that the Area Planning Commission uphold this appeal, vacate the Director's approval of the Project, and direct staff to prepare an EIR for the Project.

Sincerely,



Aidan P. Marshall

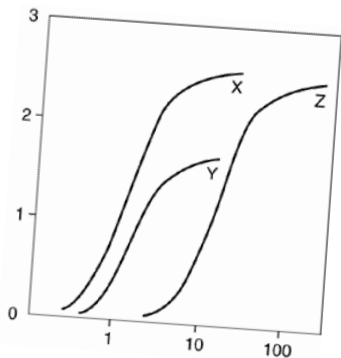
APM:acp

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<sup>119</sup> City of Los Angeles Planning Department, Director's Letter of Determination (September 21, 2022), pg. 11.

<sup>120</sup> *Id.*

# **EXHIBIT A**



## Clark & Associates

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October 4, 2022

Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 940804

**Attn: Mr. Aidan Marshall**

**Subject: Comments On Proposed Use Development Project  
Located At 216 South Spring Street (DIR-2020-7846-DB-  
SPR-RDP-HCA)**

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Dear Mr. Marshall,

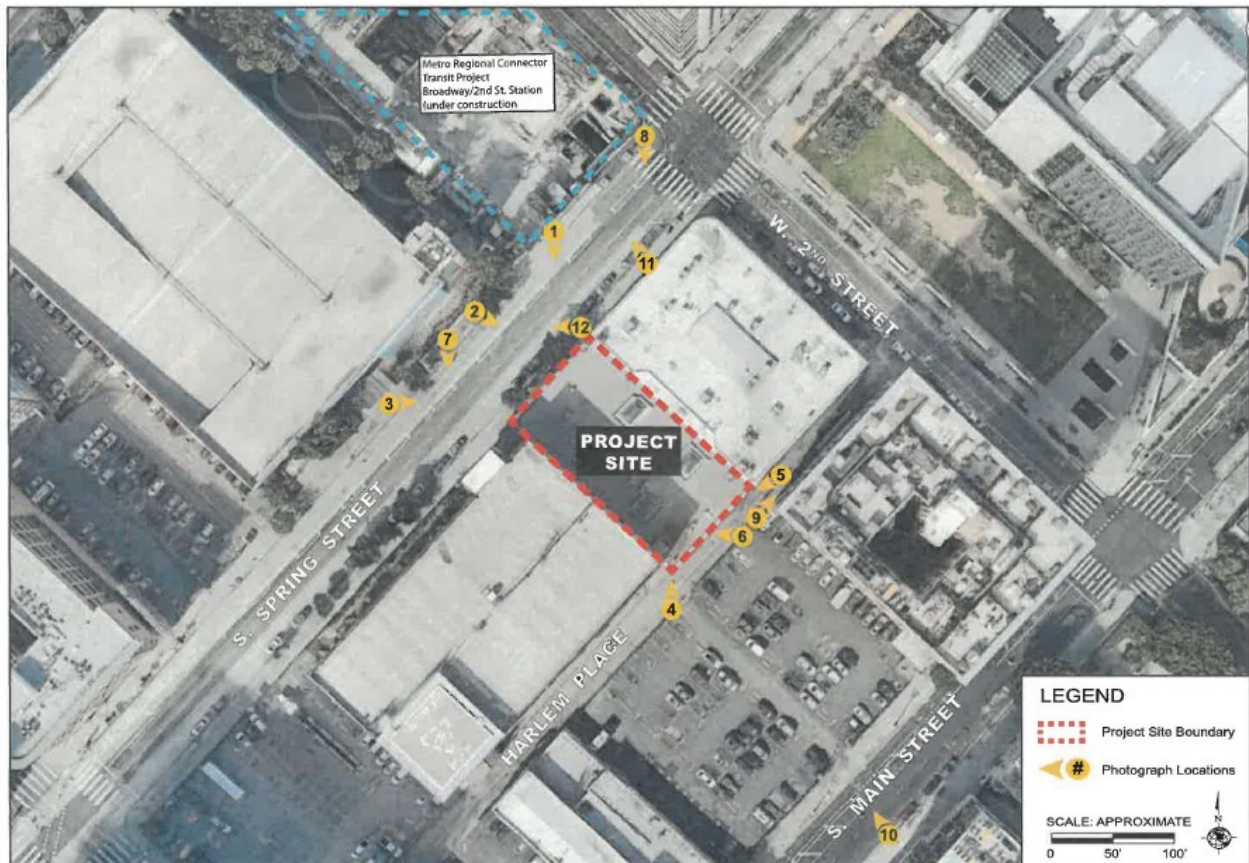
At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the 2022 City of Los Angeles (the City) Categorical Exemption of the above referenced project.

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

The Project Site occupies approximately 12,784 square feet of lot area (0.29 acres) and is currently developed with a one-story commercial building. The Applicant proposes the demolition of the existing structure for the construction of a 17- story mixed-use building with 120 multi-family dwelling units, 1,032 square feet of retail, and a 1,981 square-foot restaurant. The proposed development would reach a maximum height of 223 feet and 4 inches above grade. The unit mix would include 16 studio units, 89 one-bedroom units, 13 two-bedroom units, and two three-bedroom units. Of the 120 dwelling units, 11 percent of the units (14 units) would be reserved at the "very low income" level. The building would include approximately 12,692 square feet of open space, including an outdoor rooftop deck, common recreation areas, and private balconies. The Proposed Project would include a total of 103,550 square feet of floor area, resulting in an approximate 8.1:1 FAR. The Proposed Project would provide 69 vehicle parking spaces on-site, pursuant to AB 744, in a three-level subterranean parking garage and 102 bicycle parking spaces. There are two non-protective street trees in the public right-of-way which would be removed. The street tree removal is subject to a 2:1



replacement ratio to the satisfaction of the Board of Public Works. There are no existing trees on the Project Site. The Project also proposes to plant 30 24-inch box trees on-site, pursuant to the Los Angeles Municipal Code (LAMC).



Source: Google Earth, Aerial View, 2020.

Figure 3  
Aerial Photograph of the Project Site and Surrounding Land Uses

**Figure 1: 216 South Spring Street Project Location**

According to the Notice of Exemption (NOE), the Proposed Project meets all of the criteria necessary to qualify for a CEQA Exemption as a Class 32 (Infill Development Project) pursuant to CEQA Guideline Sections 15332. A Class 32 Exemption would not be applicable if it can be demonstrated that the project will have significant air quality impacts.

The failure of the City to analyze the health risks from stationary emissions associated with the project require the City to withdraw the NOE and have the Proponent prepare an environmental impact report (EIR)

### **Specific Comments:**

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

The City has failed to conduct a numerical health risk analysis (HRA) for Project. The NOE states that, for the purposes of assessing pollution concentrations upon sensitive receptors, the SCAQMD has developed LSTs that are based on the number of pounds of emissions per day that can be generated by a project that would cause or contribute to adverse localized air quality impacts.<sup>1</sup> The nearest sensitive receptors that could potentially be subject to localized air quality impacts associated with construction of the Proposed Project include the residential buildings to the west of the Project Site. For the Criteria Pollutants assessed under CEQA, this is correct. For toxic air contaminants (TACs), there are no LSTs, nor levels of significance based on the pounds per day. Instead, the determination of a significance threshold is based on a *quantitative risk analysis* that requires the City to perform a multistep, quantitative health risk analysis.

TACs, including diesel particulate matter (DPM)<sup>2</sup>, contribute to a host of respiratory impacts and may lead to the development of various cancers. Failing to quantify those impacts places the community at risk for unwanted adverse health impacts. *Even brief exposures to the TACs could lead to the development of adverse health impacts over the life of an individual.*

Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. TACs are airborne substances that are

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<sup>1</sup> City of Los Angeles. 2022. NOE 216 South Spring Street. Pg 66

<sup>2</sup> Because DPM is a TAC, it is a different air pollutant than criteria particulate matter (PM) emissions such as PM10, PM2.5, and fugitive dust. DPM exposure causes acute health effects that are different from the effects of exposure to PM alone.

capable of causing short-term (acute) and/or long-term (chronic or carcinogenic, i.e., cancer causing) adverse human health effects (i.e., injury or illness). TACs include both organic and inorganic chemical substances. The current California list of TACs includes approximately 200 compounds, including particulate emissions from diesel-fueled engines.

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.<sup>3,4,5</sup> Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.<sup>6</sup> Exposure to DPM increases the risk of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls, immunological allergic reactions, and airway constriction.<sup>7</sup> DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM<sub>2.5</sub> and PM<sub>10</sub>.<sup>8</sup>

The inherent toxicity of the TACs requires the City to first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern. Following that analysis, then the City can make a determination of the relative significance of the emissions.

According to the NOE, the nearest sensitive receptors to the Project site include a mixed-use

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<sup>3</sup> California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB%20identified%20DPM,and%20other%20adverse%20health%20effects.>

<sup>4</sup> U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

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

<sup>6</sup> California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

<sup>7</sup> Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.

<sup>8</sup> Health & Safety Code § 39655(a) (defining "toxic air contaminant" as air pollutants "which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant.")

residential building located at 108 West 2<sup>nd</sup> Street. Along with 3 other mixed use sites, they represent the closest sensitive receptors to the Project.

Sensitive receptors identified within 500 feet of the Project Site include:

- 1) Mixed-use residential building immediately northeast of the Project Site, located at 108 W. 2<sup>nd</sup> Street;
- 2) Multi-family residences further east of the Project Site, located at 222 S. Main Street;
- 3) Multi-family residences further southwest of the Project Site, located at 242 S. Broadway and 257 S. Spring Street; and
- 4) Future mixed-use residential building west of the Project Site, located at 222 W. 2<sup>nd</sup> Street (currently under construction).

Figure 2: page 60 of NOE Indicating Closest Sensitive Receptors

These receptors would be exposed to TACs released during Project construction and operation, including DPM. No effort is made in the NOE to quantify the potential health impacts from DPM generated by construction activities or operational activities from the Project on these sensitive receptors. The City's failure to perform such an analysis is clearly a major flaw in the NOE and may be placing the residents of the adjacent structures at risk from the construction and operational phases of the Project.

**2. Using The Data From The CalEEMOD Analysis Of The Construction Phase Of The Project, An Air Dispersion Model Of Potential Releases of DPM Show The Annual Average Concentration Of DPM At The Nearest Receptor Would Exceed 2 ug/m3 During The Construction Phase**

Using the CalEEMOD analysis supplied in Attachment 4 of the NOE it is possible to calculate potential emissions of DPM at the nearest receptor to the Project site during the construction phase of the Project.

### Mitigated Construction

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Year	lb/day										lb/day					
2022	1.8177	23.5920	19.8870	0.0534	3.3988	0.8105	4.2093	1.4295	0.7600	2.1895	0.0000	5,538.8798	5,538.8798	0.7348	0.5088	5,708.8753
2023	1.6744	13.8198	19.4852	0.0389	1.2219	0.6479	1.8698	0.3267	0.6076	0.9343	0.0000	3,811.8416	3,811.8416	0.6523	0.0735	3,850.0392
2024	8.5860	12.9603	19.2150	0.0386	1.2219	0.5773	1.7991	0.3267	0.5412	0.8679	0.0000	3,778.4829	3,778.4829	0.6480	0.0713	3,815.9158
Maximum	8.5860	23.5920	19.8870	0.0534	3.3988	0.8105	4.2093	1.4295	0.7600	2.1895	0.0000	5,538.8798	5,538.8798	0.7348	0.5088	5,708.8753

Figure 3: CalEEMOD Analysis Of Construction Phase

Assuming that the emissions are limited to just the on-site emissions of PM10 exhaust, the total amount of emissions over the site is calculated to be approximately 305 lbs of DPM over the construction period.

### 3.0 Construction Detail

#### Construction Phase

Phase Number	Phase Name	Phase Type	Start Date	End Date	Num Days Week	Num Days	Phase Description
1	Demolition	Demolition	7/1/2022	8/1/2022	5	22	
2	Grading	Grading	8/2/2022	11/1/2022	5	66	
3	Building Construction	Building Construction	11/2/2022	2/28/2024	5	346	
4	Architectural Coating	Architectural Coating	3/1/2024	7/2/2024	5	88	

Figure 4: Time Line Of Construction Phase

Using the only values for the on-site emissions, the emission rate for the site was calculated below.

Phase	Year	Emissions	Duration	Total Emissions For Phase	Emissions Per Day	Emission Rate Per Hour	Site Wide Annual Emission Rate
		lbs/day	days	lbs	lbs/day	lbs-hour	lbs-hr/ft2
Demolition	2022	0.3375	22	7.425	0.014224138	0.001778017	
Grading	2022	0.7463	66	49.2558	0.09435977	0.011794971	
Building Construction	2022	0.73	40	29.2	0.055938697	0.006992337	
	2023	0.6379	250	159.475	0.305507663	0.038188458	

Phase	Year	Emissions	Duration	Total Emissions For Phase	Emissions Per Day	Emission Rate Per Hour	Site Wide Annual Emission Rate
		lbs/day	days	lbs	lbs/day	lbs-hour	lbs-hr/ft2
	2024	0.5675	56	31.78	0.060881226	0.007610153	
Architectural Coating	2024	0.3227	88	28.3976	0.054401533	0.006800192	
Total			522	305.5334	0.585313027	0.073164128	6.97503E-06

Assuming that emissions will be limited to an eight-hour period during weekdays it is possible to calculate averaged emissions over the whole construction site. Using AERMOD, the US EPA's preferred air dispersion model, it is possible to calculate the concentrations of DPM from the construction area at the closest receptors located at 108 West 2<sup>nd</sup> Street. AERMOD is an acronym for the American Meteorological Society/Environmental Protection Agency Regulatory Model Improvement Committee's Dispersion Model. AERMOD contains the necessary algorithms to model air concentrations from a wide range of emission source types, including stack-based point sources, fugitive area sources, and volume sources.

Using the meteorological data from SCAQMD for the USC/Downton monitoring station (closest met station to the Project site), limiting the emissions to an 8-hour period on weekdays, the concentrations at the 108 West 2<sup>nd</sup> Street building were calculated and are summarized below.

X	Y	2012	2013	2014	2015	2016	Average
m	m	ug/m <sup>3</sup>	ug/m <sup>3</sup>	ug/m <sup>3</sup>	ug/m <sup>3</sup>	ug/m <sup>3</sup>	ug/m <sup>3</sup>
385055	3768512	2.485695	2.575368	2.161039	2.255038	2.439032	2.383234
385072.5	3768497	0.453255	0.4852313	0.3613367	0.4266863	0.4590648	0.437115
385090.8	3768481	0.139004	0.1558533	0.09672991	0.1260649	0.1403288	0.131596
385098.9	3768528	0.353684	0.3685095	0.3430974	0.3342747	0.3823079	0.356375

Using the OEHHA's HARP 2 Standalone Risk software, the cancer risk to the most sensitive population, infants less than 2 years old was calculated. The cumulative risk for exposure during the 2 years of construction is 814 in 1,000,000, much greater than the 10 in 1,000,000 threshold outlined by SCAQMD. For adults, the risk from exposure to DPM from the construction phase



of the project is 17.5 in 1,000,000. The results of the air model and the health risk analysis are attached as an appendix to this letter.

### **3. The Air Quality Analysis For The Project Fails To Accurately Assess The Impacts From The Emergency Generator That Will Be Installed Onsite.**

In Attachment 4 to the NOE of Project, the air quality analysis assumes that the back up generator (BUG) on site will only be operated for 12 hours a year (testing and maintenance). According to SCAQMD Rules 1110.2, 1470, back-up generators (BUGs) are allowed to operate for up to 200 hours per year and maintenance cannot exceed more than 50 hours per year. The City must revise its air quality analysis to include the use of BUGs onsite in an EIR.

In addition to the testing emissions the air quality analysis must include the substantial increase in operational emissions from BUGs in the Air Basin due to unscheduled events, including but not limited to Public Safety Power Shutoff (PSPS) events and extreme heat events. Extreme heat events are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.<sup>9</sup> From January, 2019 through December, 2019, Southern California Edison reported 158 of their circuits underwent a PSP event<sup>10</sup>. In Los Angeles County two circuits had 4 PSPS events during that period lasting an average of 35 to 38 hours. The total duration of the PSPS events in Los Angeles lasted between 141 hours to 154 hours in 2019. In 2021, the Governor of California declared that during extreme heat events the use of stationary generators shall be deemed an emergency use under California Code of Regulations (CCR), title 17, section 93115.4 sub. (a) (30) (A)(2). The number of Extreme Heat Events is likely to increase in California with the continuing change in climate the State is currently undergoing.

Power produced during PSPS or extreme heat events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts).<sup>11</sup> Of particular concern are health effects related to emissions from diesel back-up engines.

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<sup>9</sup> Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021.

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

<sup>11</sup> CARB. 2019. Use of Back-up Engines For Electricity Generation During Public Safety Power Shutoff Events. October 25, 2019.

DPM has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make people more susceptible to further injury.

According to the California Public Utilities Commission (CPUC) de-energization report<sup>12</sup> in October 2019, there were almost **806 PSPS events** (emphasis added) that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers. CARB's data also indicated that on average each of these customers had about 43 hours of power outage in October 2019.<sup>13</sup> Using the actual emission factors for each diesel BUG engines in the air district's stationary BUGs database, CARB staff calculated that the 1,810 additional stationary generators (like those proposed for the Project) running during a PSPS in October 2019 generated 126 tons of NOx, 8.3 tons of particulate matter, and 8.3 tons of DPM.

For every PSPS or Extreme Heat Event (EHE) triggered during the operational phase of the project, significant concentrations of DPM will be released that are not accounted for in the City's analysis. In 2021, two EHEs were declared. For the June 17, 2021 EHE, stationary generator owners were allowed to use their BUGs for 48 hours. For the July 9, 2021 EHE, the stationary generator owners were allowed to use their BUGs for 72 hours. These two events would have increased 10 fold the calculated DPM emissions from the Project if only the 12 hours of testing claimed in the Categorical Exemption were to be true. An EIR must be written for the Project that includes an analysis of the additional operation of the BUG that will occur at the project site that is not accounted for in the current air quality analysis.

**4. Given The Proximity Of Sensitive Receptors To The Site And The Nature of The Toxic Air Contaminants Emitted, The Operational Emissions From The Back Up Generator Will Cause A Significant Health Risk To Residents Near The Project Site.**

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<sup>12</sup> <https://www.cpuc.ca.gov/deenergization/> as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage..

<sup>13</sup> CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.



No attempt is made by the City to assess how the routine testing and maintenance of the diesel emergency generator would affect the identified sensitive receptors. Using the SCAQMD's Rule 1401 Risk Assessment Programs Risk Tool V1.103 software, it is possible to generate a site-specific screening level HRA for emissions from the back-up generator (BUG). Assuming the system is restricted to maintenance and testing for 12 hours per year or less, the model calculates emissions of DPM of approximately 1.07 lbs per year. This value is the same as the amount reported in the NOE for the operational analysis of the site.

Assuming the generator's emissions will be vented at the ground level, the vent to the generator would be approximately 14 feet above grade level. For the Risk Tool inputs, the stack height (exit point of the generator) was set to 14 feet above grade.

Based on the emission of 1.2 lbs per year of DPM, the SCAQMD Risk Tool calculates a risk of 17.3 in 1,000,000 for residents living within 25 meters of the Project Site. Commercial workers located within 25 meters of the site face a potential health risk of 5.99 in 1,000,000. The model was set to assume T-BACT controls were in place for the generator (control efficiency of 99%).

All of the results for this analysis are presented in Exhibit B to this letter. The City must address this significant error in their air quality analysis and prepare an EIR for the Project.

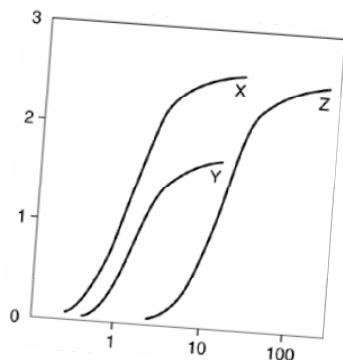
## **Conclusion**

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

Sincerely,







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

*Principal Toxicologist*

**Toxicology/Exposure Assessment Modeling**

**Risk Assessment/Analysis/Dispersion Modeling**

**Education:**

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

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

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

**Professional Experience:**

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

Significant projects performed by Dr. Clark include the following:

**LITIGATION SUPPORT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

##### **Client – Confidential**

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

##### **Client – Confidential**

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

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

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



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

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

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

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

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

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

**Client: Confidential, Minneapolis, Minnesota**

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

**Client – United Kingdom Environmental Agency**

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

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

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

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

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

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

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

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

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

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

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

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

**PUBLIC HEALTH/TOXICOLOGY**

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

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

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

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

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

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

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

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

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

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

**Client – United Kingdom Environmental Agency**

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

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

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

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

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

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

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

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

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

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

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

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

**RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS**

**Client: Confidential, Atlanta, Georgia**

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

**Client: Confidential, Escondido, California**

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

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

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

**Client: Confidential, Bogotá, Columbia**

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

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

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

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

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

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

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

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

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

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

**Client –Dominguez Energy, Carson, California**

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

**Kaiser Ventures Incorporated, Fontana, California**

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

ANR Freight - Los Angeles, California

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

**Kaiser Ventures Incorporated, Fontana, California**

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

**Unocal Corporation - Los Angeles, California**

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

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

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

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

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



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

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

**IT Corporation, North Carolina**

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

**Professional Associations**

American Public Health Association (APHA)

Association for Environmental Health and Sciences (AEHS)

American Chemical Society (ACS)

California Redevelopment Association (CRA)

International Society of Environmental Forensics (ISEF)

Society of Environmental Toxicology and Chemistry (SETAC)

**Publications and Presentations:**

**Books and Book Chapters**

Sullivan, P., **J.J. J. Clark**, F.J. Agardy, and P.E. Rosenfeld. (2007). *Synthetic Toxins In The Food, Water and Air of American Cities*. Elsevier, Inc. Burlington, MA.

Sullivan, P. and **J.J. J. Clark**. 2006. *Choosing Safer Foods, A Guide To Minimizing Synthetic Chemicals In Your Diet*. Elsevier, Inc. Burlington, MA.

Sullivan, P., Agardy, F.J., and **J.J.J. Clark**. 2005. *The Environmental Science of Drinking Water*. Elsevier, Inc. Burlington, MA.

Sullivan, P.J., Agardy, F.J., **Clark, J.J.J.** 2002. *America's Threatened Drinking Water: Hazards and Solutions*. Trafford Publishing, Victoria B.C.

**Clark, J.J.J.** 2001. "TBA: Chemical Properties, Production & Use, Fate and Transport, Toxicology, Detection in Groundwater, and Regulatory Standards" in *Oxygenates in the Environment*. Art Diaz, Ed.. Oxford University Press: New York.

**Clark, J.J.J.** 2000. "Toxicology of Perchlorate" in *Perchlorate in the Environment*. Edward Urbansky, Ed. Kluwer/Plenum: New York.

**Clark, J.J.J.** 1995. Probabilistic Forecasting of Volatile Organic Compound Concentrations At The Soil Surface From Contaminated Groundwater. UMI.

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

#### **Journal and Proceeding Articles**

- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. Organohalogen Compounds, Volume 70 (2008) page 002254.
- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. Organohalogen Compounds, Volume 70 (2008) page 000527
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** (2007). "Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." *Environmental Research*. 105:194-199.
- Rosenfeld, P.E., **Clark, J. J.**, Hensley, A.R., and Suffet, I.H. 2007. "The Use Of An Odor Wheel Classification For The Evaluation of Human Health Risk Criteria For Compost Facilities" *Water Science & Technology*. 55(5): 345-357.
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 2006. "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13<sup>th</sup> Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2004. "The Value Of An Odor Quality Classification Scheme For Urban Odor" WEFTEC 2004. 77th Annual Technical Exhibition & Conference October 2 - 6, 2004, Ernest N. Morial Convention Center, New Orleans, Louisiana.
- Clark, J.J.J.** 2003. "Manufacturing, Use, Regulation, and Occurrence of a Known Endocrine Disrupting Chemical (EDC), 2,4-Dichlorophenoxyacetic Acid (2,4-D) in California Drinking Water Supplies." National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Minneapolis, MN. March 20, 2003.

- Rosenfeld, P. and **J.J.J. Clark**. 2003. "Understanding Historical Use, Chemical Properties, Toxicity, and Regulatory Guidance" National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Phoenix, AZ. February 21, 2003.
- Clark, J.J.J.**, Brown A. 1999. Perchlorate Contamination: Fate in the Environment and Treatment Options. In Situ and On-Site Bioremediation, Fifth International Symposium. San Diego, CA, April, 1999.
- Clark, J.J.J.** 1998. Health Effects of Perchlorate and the New Reference Dose (RfD). Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.
- Browne, T., **Clark, J.J.J.** 1998. Treatment Options For Perchlorate In Drinking Water. Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.
- Clark, J.J.J.**, Brown, A., Rodriguez, R. 1998. The Public Health Implications of MtBE and Perchlorate in Water: Risk Management Decisions for Water Purveyors. Proceedings of the National Ground Water Association, Anaheim, CA, June 3-4, 1998.
- Clark J.J.J.**, Brown, A., Ulrey, A. 1997. Impacts of Perchlorate On Drinking Water In The Western United States. U.S. EPA Symposium on Biological and Chemical Reduction of Chlorate and Perchlorate, Cincinnati, OH, December 5, 1997.
- Clark, J.J.J.**; Corbett, G.E.; Kerger, B.D.; Finley, B.L.; Paustenbach, D.J. 1996. Dermal Uptake of Hexavalent Chromium In Human Volunteers: Measures of Systemic Uptake From Immersion in Water At 22 PPM. *Toxicologist*. 30(1):14.
- Dodge, D.G.; **Clark, J.J.J.**; Kerger, B.D.; Richter, R.O.; Finley, B.L.; Paustenbach, D.J. 1996. Assessment of Airborne Hexavalent Chromium In The Home Following Use of Contaminated Tapwater. *Toxicologist*. 30(1):117-118.
- Paulo, M.T.; Gong, H., Jr.; **Clark, J.J.J.** (1992). Effects of Pretreatment with Ipratropium Bromide in COPD Patients Exposed to Ozone. *American Review of Respiratory Disease*. 145(4):A96.
- Harber, P.H.; Gong, H., Jr.; Lachenbruch, A.; **Clark, J.**; Hsu, P. (1992). Respiratory Pattern Effect of Acute Sulfur Dioxide Exposure in Asthmatics. *American Review of Respiratory Disease*. 145(4):A88.
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## **EXHIBIT B**



WI #22-005.23

October 4<sup>th</sup>, 2022

Aidan P. Marshall  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
(650) 589-1660

**SUBJECT: 216 South Spring Project Categorical Exemption, Comments on the Noise Analysis**

Dear Mr. Marshall,

Per your request, I have reviewed the subject matter document for the 216 South Spring Project Categorical Exemption (CatEx) in Los Angeles, California. The proposed Project involves demolition of one existing commercial building and the construction, use and maintenance of a 17-story mixed-use building. The Noise Impact Analysis is contained in Section 4.0, subheading d of the CatEx, with supplemental calculations in Attachment 3.

The Project is surrounded by noise sensitive uses – residences within one block on the northeast, southwest, and east, as well as a church to the east, a (closed) movie theatre to the southeast, and offices to the north. The closest residence is the Higgins Building at 108 W 2nd St, roughly 20 feet across an alley at the closest point

**Baseline Noise Level characterizations are Incomplete**

The noise analysis relies on short-term measurements of 15-minute duration. In order to conduct the CEQA analysis, the baseline must be established for evening, and possibly nighttime conditions. Social events in the roof deck terrace with pool and lounge spaces could occur during evening hours, and rooftop equipment could also operate during evening and nighttime conditions. Without this data, it is not possible to evaluate the significance of noise sources operating during non-daytime hours.

Furthermore, the noise analysis relies on these short-term measurements without any discussion of how typical these data were for daytime conditions or how they would apply to evening or nighttime conditions. Environmental noise can vary widely throughout the day (perhaps +/-10 dBA or more for areas with intermittent local traffic), and relying on measurements that represent only 2% of the daytime hours (7 AM to 7 PM) leaves quite a lot for interpretation

## Thresholds of Significance are Not Properly Developed

Per CEQA<sup>1</sup>, the CE can only be applied to projects which have no significant effects:

14 CCR § 15300

§ 15300. Categorical Exemptions.

Section 21084 of the Public Resources Code requires these guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

### Figure 1 CEQA Section 15300

Thus, a project that has significant, or **potentially significant**, effects cannot qualify for a categorical exemption. The City of Los Angeles Planning website<sup>2</sup> confirms that infill development projects (Class 32) that have significant noise impacts do not qualify for exemption from CEQA. (See Figure 2 and 3)

#### WHAT IS A CATEGORICAL EXEMPTION?

Every discretionary action requires environmental review pursuant to CEQA. However, the CEQA Guidelines include a list of classes of projects which have been determined to not have a significant effect on the environment, also known as Categorical Exemptions. If your project falls within one of these classes, it is exempt from the provisions of CEQA and no environmental review is required unless one of the exceptions in CEQA Guideline Section 15300.2 applies (discussed below).

#### WHAT IS THE CLASS 32 CATEGORICAL EXEMPTION?

The Class 32 "Infill" Categorical Exemption (CEQA Guideline Section 15332), hereafter referred to as the Class 32 Exemption, exempts infill development within urbanized areas if it meets certain criteria. The class consists of environmentally benign infill projects that are consistent with the General Plan and Zoning requirements. This class is not intended for projects that would result in any significant traffic, noise, air quality, or water quality impacts. This exemption is not limited to any use type and may apply to residential, commercial, industrial, public facility, and/or mixed-use projects.

### Figure 2 City of LA Planning Document Regarding Class 32 Exemptions<sup>3</sup>

## Incomplete CNELs

Based on a recent CEQA document published by the City of Los Angeles<sup>4</sup>, these standard Los Angeles CEQA thresholds were omitted from the CE document:

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<sup>1</sup> <https://opr.ca.gov/ceqa/>

<sup>2</sup> <https://planning.lacity.org/development-services/environmental-review#>

<sup>3</sup> <https://planning.lacity.org/odocument/ad70d15e-11b8-49ef-aba3-b168f670a576/Class%2032%20Categorical%20Exemption.pdf>

<sup>4</sup> In March 2022, City of Los Angeles Department of City Planning issued an Initial Study/Mitigated Negative Declaration (ISMND) for the Melrose and Seward project citing tiered noise increase thresholds for off-site operational traffic noise, and a 3 dB increase limit in the CNEL for stationary noise.

<https://planning.lacity.org/odocument/662769bf-8702-4acd-9c2b-d96b9845e464/ENV-2021-2909-MND.pdf>

**Significance Criteria**

Noise impacts shall be considered significant if any of the following occur as a direct result of the Project.

**Off-Site Operational Traffic Noise**

- When the noise levels at existing and future noise-sensitive land uses (e.g., residential, etc.):

Melrose and Seward Project  
Initial Study

Page 157

City of Los Angeles  
March 2022

Environmental Impact Analysis

- are less than 60 dBA CNEL and the Project creates a readily perceptible 5 dBA CNEL or greater Project-related noise level increase; or
- range from 60 to 65 dBA CNEL and the Project creates a barely perceptible 3 dBA CNEL or greater Project-related noise level increase; or
- already exceed 65 dBA CNEL, and the Project creates a community noise level impact of greater than 1.5 dBA CNEL (FICON, 1992).

In order to conduct the CEQA analysis, the baseline Ldn or CNEL must be established, and Table 8 (page 58) must provide the Ldn or CNEL.

**Sleep Disturbance Threshold is Missing**

Any nighttime activities should also be evaluated for potential sleep disturbance which could be caused by social events at the rooftop terrace areas. Sleep disturbance being noises which may not cause a person to become fully awake, but instead change a person's sleep from one deeper level of sleep to a less restful level of sleep. Although the health effects of noise are not taken as seriously in the United States as they are in other countries, they are real and, in many parts of the country, pervasive. Noise can disturb sleep by making it more difficult to fall asleep, by waking someone after they are asleep, or by altering their sleep stage, e.g., reducing the amount of rapid eye movement (REM) sleep. Noise exposure for people who are sleeping has also been linked to increased blood pressure, increased heart rate, increase in body movements, and other physiological effects. Not surprisingly, people whose sleep is disturbed by noise often experience secondary effects such as increased fatigue, depressed mood, and decreased work performance.

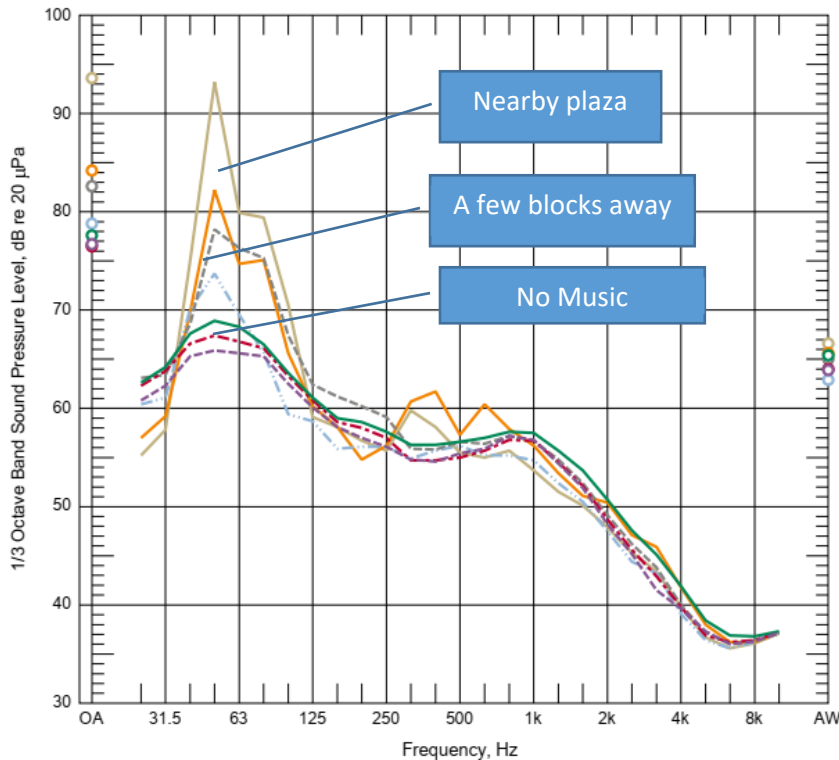
Thus, excessive noise from rooftop activities occurring between 10 PM and 7 AM could cause sleep disturbance and would be potentially significant. The World Health Organization<sup>5</sup> identifies a guidance of 45 dBA Leq (outdoors) to avoid sleep disturbance from a continuous source, and a limit of 60 dBA Lmax for intermittent sources<sup>6</sup>. However, it has been our experience that low frequency bass notes, commonly found in music played at lounges, can be problematic even when the A-weighted level complies with applicable code. This is partly because the low frequencies pass through the

<sup>5</sup> <https://www.who.int/docstore/peh/noise/Comnoise-1.pdf>

<sup>6</sup> These outdoor levels assume that the residence reduces noise by 15 dBA with windows open, which is typical for conventional construction.



exterior walls and closed windows with little reduction. The City of San Francisco<sup>7</sup> limits low frequency noise increase from this type of use to 8 dB on a C-weighted basis. To illustrate this issue, Figure 1 shows noise measurement taken when music was playing at a hotel rooftop/poolside lounge. The nearby plaza was at ground level about 150 to 250 ft from the nearest subwoofers. Even several blocks away the low frequency pulse of the music was 6 decibels higher than the non-music ambient.



**Figure 3 Sample Exterior Noise Near an Urban Hotel Lounge ( $L_{25}$ )**

The document cites no objective criterion to evaluate rooftop noise, and no criteria to evaluate potential sleep disturbance have been presented. A noise increase threshold, for the Project and the cumulative evaluations of nearby noise levels, compounds one on top of another and would potentially lead to a substantial and significant noise impact.

### ***Impact Analyses are Incomplete***

#### **Construction Noise**

There are a few errors with the construction noise analysis. The first is the aforementioned problem that the sound levels are based on a fifteen-minute sample. This amount of time may not be representative of the loudest times of day, and thus the most sensitive limits.

Another is the assumption of 15 dBA of shielding in the noise calculations. The document explicitly states that this is a “noise barrier” and thus could already be considered mitigation since it is relied upon to reduce construction noise levels. Additionally, even if implemented, this barrier would not

<sup>7</sup> [https://codelibrary.amlegal.com/codes/san\\_francisco/latest/sf\\_police/0-0-0-6511](https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_police/0-0-0-6511)

provide line of sight shielding for receivers on the top floor of the Higgins Building. Assuming the barrier is 8 feet high, receivers on the second floor or above would be able to look directly over the barrier onto the property and receive no benefit from the shielding effects. A sample calculation, taken from the Roadway Construction Noise Model (RCNM) is presented below. Calculations were performed on the 3<sup>rd</sup> floor, as a conservative estimate to avoid any barrier effects.

**Table 1: RCNM Results for Worst-case Construction Scenario on the 3<sup>rd</sup> Floor of the Higgins Building**

Description	Usage (%)	Spec Max (dBA)	Actual Max (dBA)	Receptor Distance to Project Site (Feet)	Receptor Height Above Project (Feet)	Receptor Distance to Centerline of Project Site (Feet)	Calculated LEQ (dBA)
Concrete / Industrial Saw	20	90	90	20	30	86	77.9
Dozer	40	85	82	20	30	86	73.0

**Table 2: Impact Analysis for Worst-case Construction Scenario on the 3<sup>rd</sup> Floor of the Higgins Building**

Calculated Noise Level (dBA)	Ambient Noise Level (dBA)	Level Above Ambient (dBA)	Impact Threshold (dBA)	Impact?
79.1	61.3	17.8	>5	YES

Based on the worst-case scenario, more mitigation would be needed.

Another problem is that the analysis follows the Construction Noise Quantitative General Assessment Guidelines of the FTA Transit Noise and Vibration Impact Manual. As part of this analysis, only the two loudest pieces of equipment are used per stage of construction, measured at the center of the project site. Using all equipment that is planned to be used during each construction stage and assuming the equipment will be moving around the site in different locations, both reasonable and common assumptions based on how construction sites can work, produces significant impacts that exceed the threshold.

#### Rooftop Deck/Terrace

Similarly, the noise analysis from the rooftop deck/terrace must be reconsidered. The document states that “it is unlikely that the Proposed Project would operate at such full capacity often or for a prolonged period of time that it would result in excessive crowd noise” and states that this area could accommodate “up to 60 people”. But the document fails to include analysis quantifying or otherwise characterizing the noise levels generated by use of the rooftop deck.

These noise levels could easily be much more than 5 dBA higher than the daytime noise levels shown in Table 8 (page 58), and in the absence of ambient data during evening (or nighttime) conditions, these could also be much more than 5 dBA higher than the existing evening (or nighttime) ambient. Thus, noise from the rooftop deck/terrace could be potentially significant based on information provided.

### Rooftop Equipment

The CatEx cites an expectation that the project HVAC equipment would be similar to what is on site, since the existing site is a two-story commercial building this is not a fair comparison. The existing equipment are very different in size and character from what would be required for a 17-story residential structure. For instance the Project equipment would operate during the nighttime hours, whereas HVAC for commercial office buildings can be shutdown at night.

In our experience, there would be several mechanical units on the rooftop. Such equipment could include air cooled condenser fans with a typical sound rating of 85 sound power level (PWL), and several make up air fans as large as 40,000 cubic feet per minute (CFM) (90 dBA PWL). A combination of two or more fans would generate a noise level on the order of 65 dBA at a distance of 20 ft. In the absence of ambient data during evening (or nighttime) conditions, these could also be much more than 5 dBA higher than the existing evening (or nighttime) ambient. Noise from rooftop equipment would be potentially significant and should be evaluated with more specific information.

Additionally, the document states that “the on-site equipment would be designed and located such that they would be appropriately shielded and fitted with noise muffling devices to reduce operational noise levels” This implies mitigation, which means the project cannot be covered by a categorical exemption.

### Structural Groundborne Vibration

This project shares a property line with two adjacent buildings, and as such construction vibration could trigger and impact and should be studied. There is no mention of pile driving, which is a preferred construction technique for large buildings like this. Pile driving would have the potential to cross damage thresholds for nearby buildings, and mitigation methods and possibly measurements would very likely be required.


***Conclusions***

There are several errors and omissions in the CatEx noise analysis. Correcting these would potentially identify several significant impacts which require mitigation.

Please feel free to contact me with any questions on this information.

Very truly yours,

WILSON IHRIG

A handwritten signature in blue ink, appearing to read "Jack Meighan", written over a horizontal line.

Jack Meighan  
Associate

216 South Spring Project Categorical Exemption, Comments on the Noise Analysis.docx



## **JACK MEIGHAN**

*Associate*

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Jack joined Wilson Ihrig in 2021 and is an experienced acoustics engineer with expertise in projects involving rail transit systems, highways, CEQA analysis, environmental noise reduction, mechanical drawing reviews, and construction noise and vibration mitigation. He has hands-on experience with project management, including client coordination and presentations, as well as in designing, developing, and testing MATLAB code used in acoustics applications. Additionally, his expertise includes taking field measurements, developing test plans and specifying, purchasing, setting up and repairing acoustic measurement equipment. He has experience in using Traffic Noise Model (TNM), CadnaA, EASE, Visual Basic, LabView, and CAD software.

### **Education**

- B.S. in Mechanical Engineering, University of Southern California, Los Angeles, CA
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### **Project Experience**

#### ***Metro Regional Connector, Los Angeles CA***

Planned, took, and processed measurements as part of a team to determine the effectiveness of floating slab trackwork for a new subway in downtown Los Angeles that travels below the Walt Disney Concert Hall and the Colburn School of Music.

#### ***Rodeo Credit Enterprise CEQA Analysis for New Construction, Palmdale, CA***

Wrote an accepted proposal and executed it for a noise study project to determine noise mitigation requirements on a new housing development. Led all aspects of the project and managed the budget during all phases of project completion. Completed 5 separate projects of this type for this developer.

#### ***Blackhall Studios, Santa Clarita, CA***

Led the vibration measurement effort for a new soundstage directly adjacent to an existing freight and commuter rail line. Tested equipment, processed data, and analyzed results to determine the vibration propagation through the soil to the proposed soundstage locations, and was part of the team that developed mitigation techniques for the office spaces directly next to the rail line.

#### ***Octavia Residential Condos CEQA Study, San Francisco, CA***

Calculated the STC ratings for the proposed windows to meet Title 24 requirements, modeled the acoustic performance of floor and ceiling structures, researched noise codes, helped with a mechanical design review, and wrote a report summarizing the results for a new Condominium project being developed in San Francisco.

#### ***San Diego International Airport Terminal I Replacement, CA***

Conducted interior noise and vibration measurements, analyzed measurement data to help determine project criteria, modeled the existing and future terminals in CadnaA, and was part of a team that did a complete HVAC analysis of the entire terminal, as part of a CEQA analysis where a new terminal for the airport is being designed.

***Five Points Apartments Noise Study, Whittier, CA***

Took measurements, researched sound data and solutions, and recommended mitigation for a new apartment complex that was located next to an existing car wash, as part of a CEQA review.

***USC Ellison Vibration Survey, Los Angeles, CA***

Conducted vibration measurements as part of a survey to determine the effectiveness of vibration isolation platforms that are used to insulate cell growth in a cancer research facility. Determined the effectiveness and presented this information to the client. Researched and recommended a permanent monitoring system so the client could view data in real time.

***TEN50 Condos 'Popping' Noise Investigation, Los Angeles, CA***

Was part of a team that investigated the noise source of an unwanted popping noise in luxury condos in Downtown Los Angeles. Helped isolate the noise source location with accelerometers to determine where vibrations were occurring first and used an acoustic camera to determine where in the condo the noise was coming from.

***2000 University Project, Berkely, CA***

Wrote a construction noise monitoring plan based on environmental noise calculations, wrote a report summarizing the results, and attending a meeting with the client to discuss options.

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***Bay Area Rapid Transit (BART) On-Track, CA, San Francisco Bay Area, CA\****

Day to day project manager, responsible for meetings, presentations, and coordination with the client for an ongoing noise study on the BART system. Developed MATLAB code to process measurements and determine areas where high corrugation was present, contributing to excessively high in-car noise levels. Performed noise measurements inside both the right of way and the vehicle cabin, in addition to rail corrugation measurements.

***California I-605/SR-60 Interchange Improvement, Los Angeles, CA\****

Developed a noise model of the area that predicted sound levels for abatement design, in addition to conducting noise measurements and analysis. Led the Team in use of the FHWA Traffic Noise Model Software for the project, involving three major highways and two busy interchanges extending over 17 miles in southern California.

***Sound Transit On-Track, Seattle, WA\****

Took measurements, fixed equipment, and developed software in MATLAB to process Corrugation Analysis Trolley measurements as part of an ongoing noise study on the Sound Transit Link system. Tested vibration data to determine the best measurement and processing techniques to store the data in an online database for in-car measurements.

***LA Metro CRRC Railcar Testing, Los Angeles, CA\****

Led the effort to plan the measurements, determine measurement locations and finalize the test plan. Formulated a method to capture speed data directly from legacy train vehicles. Executed noise and vibration specification measurements for new rail cars delivered by CRRC.

***City of Los Angeles, Pershing Square Station Rehabilitation Noise Monitoring, CA\****

Built noise models, wrote a construction noise plan, and assisted in on-site construction noise issues as they arose for a renovation of the Pershing Square metro station in downtown Los

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*\* Work done prior to working for Wilson Ihrig*

Angeles. Trained construction personnel in techniques for noise reduction and how to conduct noise monitoring measurements to meet project specifications.

***City of Orange Metrolink Parking Garage Construction Monitoring, CA\****

Wrote an adaptive management vibration monitoring plan, set up equipment to monitor live vibration levels, and generated weekly reports as part of an effort to build a new parking garage. Designed, planned, and completed measurements to predict and mitigate pile driving construction impacts at three historic building locations adjacent to the construction site. Coordinated with the client whenever an on-site problem arose.

***LA Metro Westside Subway Construction, Los Angeles, CA\****

Planned, organized, and processed noise measurements for the Purple Line extension construction. Implemented both long term microphones to measure noise levels and accelerometers to measure vibration levels in existing subway tunnels. Oversaw noise monitoring at sensitive construction sites for the project and worked with the contractor to find ways to reduce construction noise levels by approximately 10dB.

***Montreal Réseau Express Métropolitain, Canada\****

Conducted vibration propagation measurements used to create models to predict operational vibration levels for an under-construction transit line. Managed equipment, solved problems in the field, and wrote parts of the report summarizing the findings of the acoustic study.

***NHCRP Barrier\****

Took on-highway measurements and wrote, designed, developed, and tested MATLAB code to identify specific spectrograms to use for analyses for a project evaluating barrier reflected highway traffic noise differences in the presence of a single absorptive or reflective noise barrier.

***Siemens Railcar Testing for Sound Transit, Seattle, WA\****

Measured in-car noise and vibration for new rail cars delivered by Siemens. Developed new internal techniques for measurements based on the written specifications. Contributed to the team that helped identify issues that new cars had in meeting the Sound Transit specifications for noise and vibration. Participated in developing the test plan and specified then acquired new equipment for the measurement.

***Toronto/Ontario Eglinton Crosstown Light Rail, Final Design, Canada\****

Assisted in vibration propagation measurements, analysis, and recommendations for mitigation for a 12-mile light-rail line both on and under Eglinton Avenue. Set up and ran equipment for at-grade measurements with an impact hammer for underground measurements with an impact load cell that was used during pre-construction borehole drilling.

*\* Work done prior to working for Wilson Ihrig*

# **ATTACHMENT B**



# ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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MARC D. JOSEPH  
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December 13, 2022

### **VIA EMAIL**

Commission President Millman and Commission Members  
City Planning Commission  
**Email:** [cpc@lacity.org](mailto:cpc@lacity.org)

Yi Lu, City Planner  
**Email:** [yi.lu@lacity.org](mailto:yi.lu@lacity.org)

### **Re: Agenda Item 7 – Appeal of 216 S. Spring Street Project, Case No. DIR-2020-7846-DB-SPR-HCA, CEQA No. ENV-2020-7847-CE**

Dear Commission President Millman, Commission Members, and Ms. Lu:

On October 5, 2022, Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”) appealed the Director’s approval of the 216 S. Spring Street Project (Case No. DIR-2020-7846-DB-SPR-HCA, ENV-2020-7847-CE) (“Project”), including approval of Site Plan Review and Density Bonus pursuant to LAMC Sections 12.22 and 16.05, adoption of Findings and Conditions of Approval, and determination that the Project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to a Class 32 categorical exemption.<sup>1</sup> Our appeal explains that the Director abused its discretion and failed to proceed in the manner required by law by approving the Project in reliance on a categorical exemption and without substantial evidence to support the approval findings. CREED LA’s experts also provide substantial evidence demonstrating that the Project has significant air quality and noise impacts which render the Class 32 exemption facially inapplicable.<sup>2</sup>

On December 7, 2022, the Department Of City Planning released its Appeal Recommendation Report (“Staff Report”), which contains responses to our comments from Planning Department staff and 216 Spring St., LLC’s (“Applicant’s”) consultant, Parker Environmental Consultants. This letter addresses the responses

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<sup>1</sup> CEQA Guidelines, Section 15332.

<sup>2</sup> CEQA Guidelines, Section 15332(d) (Class 32 exemption inapplicable if project results in any significant effects relating to traffic, noise, air quality, or water quality).

to our comments contained in the Staff Report. Our air quality and hazards expert James Clark, Ph.D and noise expert Jack Meighan also provided responses to the Staff Report's contentions. In sum, these comments show that the Staff Report does not provide substantial evidence to justify reliance on a categorical exemption and make the approval findings.

### **I. The City Lacks Substantial Evidence to Conclude that the Project's Health Risk Impacts from Air Emissions are Less Than Significant**

In our initial comments, we commented that the City failed to analyze the Project's health risk impacts from exposure to Diesel Particulate Matter ("DPM"), a Toxic Air Contaminant ("TAC"). In response, the Staff Report states that "[t]here is no law or regulatory guidance that requires the preparation of a Health Risk Assessment for the proposed project."<sup>3</sup> The Staff Report's discussion ignores that while courts have not specifically required an HRA to be prepared, courts have explained that CEQA requires disclosure, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.<sup>4</sup> Here, the NOE failed to include any analysis of DPM and its anticipated health risk impacts, let alone an HRA.

The Staff Report claims that OEHHA's Risk Assessment Guidelines are inapplicable to the Project because they "are not meant to be used for a health risk evaluation of typical non-stationary source land use projects such as residential and commercial development projects."<sup>5</sup> But Section 8.2.10, "Cancer Risk Evaluation of Short Term Projects," explicitly provides guidance for "short-term projects such as construction," recommending HRAs for projects lasting longer than two months.<sup>6</sup>

In Response to Comment 1.6, the Staff Report states that DPM emissions would be less than significant because the Project's emissions of PM 10 and PM 2.5 would not exceed Localized Significance Thresholds ("LSTs").<sup>7</sup> The Staff Report's reasoning is that DPM is a "subset of both PM10 and PM2.5."<sup>8</sup> This analysis is

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<sup>3</sup> Staff Report, pg. 6, 1637 (Response to Comment 1.5).

<sup>4</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 518–522.

<sup>5</sup> Staff Report, pg. 1638.

<sup>6</sup> Office of Environmental Health Hazard Assessment (OEHHA), Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, February 2015 (OEHHA 2015), Section 8.2.10: Cancer Risk Evaluation of Short Term Projects, pp. 8-17/18; <https://oehha.ca.gov/air/crn/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>.

<sup>7</sup> Staff Report, pg. 1643.

<sup>8</sup> Staff Report, pg. 1643.

incorrect, as the Staff Report itself states that “TACs are also not classified as ‘criteria’ air pollutants,” and “there is no threshold determination for a majority of these pollutants.”<sup>9</sup> In summary, our appeal letter and analysis in the Staff Report show the City cannot rely on LSTs to analyze health impacts from DPM.

In Response to Comment 1.6, the Staff Report also claims that because “TACs are also not classified as ‘criteria’ air pollutants,” and “there is no threshold determination for a majority of these pollutants,” the Categorical Exemption is not required to analyze TAC impacts.<sup>10</sup> This conclusion ignores the mandates of CEQA to analyze health impacts.<sup>11</sup>

## **II. A CEQA Exemption is Inapplicable Because The Project Has Potentially Significant Health Risk Impacts**

As explained in our initial comments and herein, the City failed to analyze health risk impacts from TACs like DPM, thus failing to support its significance conclusion with substantial evidence. In contrast, Dr. Clark calculated the cancer risk using OEHHA’s HARP 2 Standalone Risk software, providing substantial evidence that the Project’s construction-related health risk would be 814 in 1,000,000 for children and is 17.5 in 1,000,000 for adults. This exceeds SCAQMD’s 10 in 1,000,000 threshold, resulting in a significant impact.

The Staff Report incorrectly claims that Dr. Clark’s analysis should be discounted because OEHHA’s Risk Assessment Guidelines are inapplicable to the Project.<sup>12</sup> As explained earlier, the 2015 Guidelines recommend health risk analyses for construction projects. Moreover, Dr. Clark’s comments (attached) explain that the City’s own guidance recommends following a qualitative analysis of TAC impacts with HARP modeling. The Staff Report also incorrectly states that Dr. Clark did not provide any appendix or worksheet calculations.<sup>13</sup> This is factually incorrect, as CREED LA submitted these documents to the City with our appeal via email on October 5, 2022.<sup>14</sup>

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<sup>9</sup> Staff Report, pg. 1643.

<sup>10</sup> Staff Report, pg. 1643.

<sup>11</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 518–522; 14 CCR § 15065(a)(4); PRC § 21083(b)(3), (d).

<sup>12</sup> Staff Report, pg. 1644-45.

<sup>13</sup> Staff Report, pg. 1645.

<sup>14</sup> Email from Alisha Pember (apember@adamsbroadwell.com) to apccentral@lacity.org; vince.bertoni@lacity.org; Yi.Lu@lacity.org, re: Appeal of 216 S. Spring Street Project, Case No. DIR-2020-7846-DB-SPR-HCA, CEQA No. ENV-2020-7847-CE (October 5, 2022).  
L6268-005acp

Because CREED LA provides substantial evidence of a significant DPM health risk impact, and the City fails to provide its own quantitative analysis for health risk from DPM emissions, the City lacks the support necessary to rely on a categorical exemption.<sup>15</sup>

### **III. A CEQA Exemption is Inapplicable Because the City Improperly Relies on Noise Mitigation Measures**

The Staff Report reiterates the incorrect claim that the Project's construction noise mitigation measures are not mitigation measures because they are "of standard language imposed by the City of Los Angeles."<sup>16</sup> As already explained in our appeal, the Project's noise mitigation measures are not standard provisions that are uniformly applied to any construction project. For instance, the City's Noise Ordinance does not require every construction project to use a sound barrier at least 8 feet tall that achieves a minimum 15 dBA – this measure was designed to reduce the Project's 90 dBA construction noise impact<sup>17</sup> to below the 75 dBA construction noise threshold.<sup>18</sup> Since the City relies on noise-reducing measures not of standard language or general applicability, they must be considered mitigation measures. Thus, the Class 32 Exemption is facially inapplicable, and the City may not rely on any CEQA exemption for the Project because CEQA prohibits mitigated exemptions.<sup>19</sup>

### **IV. Conclusion**

For the reasons stated herein and in our appeal, CREED LA respectfully requests that the Area Planning Commission uphold this appeal, vacate the Director's approval of the Project, and direct staff to prepare an EIR for the Project.

Sincerely,



Aidan P. Marshall

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<sup>15</sup> *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1191, quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205–206 (exemption improper where there is any reasonable possibility that a project or activity may have a significant effect on the environment).

<sup>16</sup> Staff Report, pg. 1649-52 (Response to 1.10, 1.11).

<sup>17</sup> Categorical Exemption, pg. 59, Table 9.

<sup>18</sup> See LAMC Section 112.05.

<sup>19</sup> *SPAWN v. County of Marin* (2004) 125 Cal.App.4th 1098, 1198-1201.



WI #22-005.23

October 12<sup>th</sup>, 2022

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**SUBJECT: 216 South Spring Project Categorical Exemption, Comments on the Noise Analysis**

Per your request, I have reviewed the Responses provided by Parker Environmental to our prior comments on the 216 South Spring Project Categorical Exemption (CatEx) in Los Angeles, California. The proposed Project involves demolition of one existing commercial building and the construction, use and maintenance of a 17-story mixed-use building. The following are the responses provided (bold), and our follow-up comments afterwards in plain text. Due to space limitations, the entire response was not included.

**1.12 – Sound energy reaches the receiver only by bending (diffracting) over of the top of the barrier. This diffraction over the barrier reduces the sound level that reaches a sensitive receptor. Therefore, with the presence of the barrier, noise at the ground level would be absorbed by the ground and then diffused with height.**

Their response misses the technical questions raised by our comments. If the construction is happening in the middle of the construction area, the barrier at the edge of the construction zone does not break line of site for the receiver locations roughly >20 feet high and provides no benefit. The diffracting effect mentioned above is not applicable, since 3<sup>rd</sup> floor receivers will have a complete view into the construction zone that is not blocked by the 8-foot barrier.

**1.13 – Since the Proposed Project would provide a mix of multi-family residential and commercial land uses in an area with residential and commercial land uses, it is anticipated that the Proposed Project would not result in excessively loud nighttime noise**

This response is premised on an assumption of future tenant occupancy. Every building is different, and has different outdoor uses, and different mechanical equipment. To address potentially significant impacts, it would be necessary to make a commitment (mitigation) to provide feasible mitigation such as sound enclosures around HVAC units to meet noise codes. The possibility of limiting nighttime noise either through Conditions or tenant selection or providing noise reduction mitigation measures are not provided in the project documents and thus these types of noise sources could result in a potentially significant impact.

**The commenter also assumes the Proposed Project would host social events on the rooftop area, which is a hypothetical claim. Occupancy and use of these rooftop areas would be consistent with other residential uses in the Project Site vicinity. The Proposed Project would be subject to LAMC Section 116.01 (Loud, Unnecessary and Unusual Noise), which prohibits all future users of the Proposed Project to willfully make or continue, or cause to**

**be made or continued, any loud, unnecessary, and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area**

To qualify for a Categorical Exemption, the project must show that no potentially significant impacts would occur. The “hypothetical claim” that rooftop social events is a reasonable expectation, and it is the responsibility of the project to a) state that such activities would be prohibited or b) provide analysis. It is hypothetical to say that these spaces would not hold gathering for residents and that these gatherings would be incapable of creating noise impacts without any documentation directly from the project. It is also dubious to cite noise code that residents are required to follow on their own; the residents of the Project would only be present because the Project creates the opportunity for the residents to live there in that space. If the project is built in such a way where any outdoor gathering would exceed the noise code, it is not sufficient to blame future residents after the Project proponents have completed the project.

**1.14 - The Categorical Exemption utilizes the approach provided in the Federal Transit Administration’s Transit Noise and Vibration Impact Assessment Manual (September 2018). Section 7 of this manual provides guidance on quantitatively estimating construction noise from typical construction equipment for a general assessment. The manual states “only determine Leq equip for the two noisiest pieces of equipment expected to be used in each phase of construction. Then, sum the levels for each phase of construction using decibel addition. Additionally, this approach also states that the distance value (D) assumes all equipment operates at the center of the project**

For the purposes of a Categorical Exemption, it is necessary to identify whether there would be any potentially significant impacts. Thus, a more conservative method would identify the loudest instances of equipment used in the location that is closest to a sensitive receiver and combine those with additional noise sources within the nearby area. Such calculations will produce a higher noise level estimate and would be more appropriate for analysis for a categorical exemption, which implies there is no mitigation that would be needed. Without doing a detailed analysis, it is possible that substantial work could be required near the property line

**1.15 - As stated on page 63 of the Categorical Exemption, the design and placement of HVAC units and exhaust fans would be required to comply with the regulations under Section 112.02 of the LAMC, which prohibits noise from air conditioning, refrigeration, heating, pumping, and filtering equipment from exceeding the ambient noise level on the premises of other occupied properties by more than five decibels. It is anticipated that the Proposed Project will be subject to conditions of approval to ensure that the project operator complies with the prescriptive and performance-based requirements of the LAMC.**

While citing code correctly, this is a circular statement, stating that since the regulations would need to be met in the future, and no study or guidance is needed right now. It is not good practice to rely on the city to impose Conditions. The analysis should state what assumptions form the basis of the noise analysis and highlight those items to be included in the Conditions. The response gives no indication or commitment that a future noise study would be done during future HVAC procurement and installation.

**1.16 - As shown, a pile driver was not listed as anticipated construction equipment due to the fact that high noise and vibration impacts are associated with pile driving.**

Pile driving is common in construction of buildings of this height. Therefore, it must be made clear that should pile driving be considered in the future, additional analysis and CEQA clearance will be required.

**1.17 -The project design features described on page 57 of the Categorical Exemption are not considered mitigation measures as they will be voluntarily incorporated and enforced during construction as conditions of approval**

Response 1.12 above covers the sound barrier analysis for top floor receivers. These blankets are required to mitigate the construction noise; without them, the analysis in the CatEx currently shows significant impacts at receptors 1 and 4. Therefore, these project design features are mitigation.

**1.18 - As the claims and assertions presented by the commenter are erroneous and supported by speculative, misleading, and unsubstantiated assumptions, a significant noise impact would not occur, and mitigation measures are not required.**

See the other responses 1.12 through 1.17 and 1.21 through 1.22 for comments on technical errors

**1.19 – Because the Proposed Project would consist of multi-family residential and neighborhood-serving commercial land uses that are anticipated to operate during the daytime hours, there is no evidence to suggest that the Proposed Project would result in excessively loud operational noise levels.**

HVAC systems and other operational equipment will operate at night and thus an analysis of sleep disturbance is warranted. Response 1.15 comments on HVAC noise

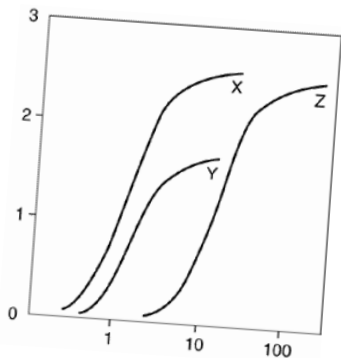
**1.21 - the noise levels from rooftop activities would be approximately 78.5 dBA  $L_{eq}$  within the 17<sup>th</sup> level roof deck. When factoring in the distance to nearby sensitive receptors, the noise levels would be 54.1 dBA  $L_{eq}$  at a reference distance of 50 feet. The 17<sup>th</sup> level roof deck would be surrounded with glass railing and planters that would help to further attenuate noise in the surrounding area. Furthermore, this noise level estimate is conservative because this roof level is well above the surrounding sensitive receptor locations, and there is acoustic shielding provided by the edge of the roof. Based on the ambient noise level ( $L_{eq}$  61.3 dB) recorded at the nearest sensitive receptor, Higgins Building Apartments (Attachment 3, Figure 1), the Proposed Project would not increase ambient noise levels by more than 5 dBA from the open space operating at full capacity**

The response fails to account for nighttime noise. The ambient noise level would almost certainly be much quieter than the daytime 61.3 dBA in the early nighttime, when a party on the roof deck could easily take place. As such, the analysis lacks data to draw appropriate conclusions and it is not possible to conclude whether project nighttime noise levels would be over an ambient level.

**1.22 - Because the Proposed Project would consist of multi-family residential and neighborhood-serving commercial land uses that are anticipated to operate during the daytime hours, there is no evidence to suggest that the Proposed Project would result in excessively loud operational noise levels that would cause sleep disturbance impacts. As further stated in Response to Comment 1.15 and Response to Comment 1.21, above, the Proposed Project would not result in a significant impact from the operation of mechanical HVAC equipment and outdoor open space, respectively**

As stated in responses 1.13 and 1.21, noise impacts at night are possible, and as such sleep disturbance criteria should be studied.





December 12, 2022

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**Attn: Mr. Aidan Marshall**

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**Subject: Comments On Department Of City Planning Appeal Recommendation Report Case No. DIR-2020-7846-DB-SPR-HCA-1a, CEQA No. ENV-2020-7847-CE, Project Located At 216 South Spring Street**

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Dear Mr. Marshall,

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the 2022 City of Los Angeles (the City) Appeal Recommendation Report of the above referenced project. This letter addresses Responses provided by staff and Parker Environmental to our prior comments on the 216 South Spring Project Categorical Exemption.

The failure of the City to analyze the health risks associated with the development of the Project and specifically the toxic air pollutants, known to be carcinogenic to the State of California, from stationary emissions associated with the Project require the City to withdraw the Notice of Exemption (NOE) and have the Proponent prepare an environmental impact report (EIR).

The City's responses to comments raised by my October 8, 2020 letter (Comments 1.4 to 1.8) ignore the substantial guidance from the City itself regarding toxic air contaminants. According to the City of Los Angeles's Air Quality And Health Effects guidance,<sup>1</sup> exposure to DPM may be a health hazard, particularly to *children* (emphasis added) whose lungs are still developing and the elderly who may have other serious health problems. This statement from the City's guidance clearly indicates that the City is aware that age of exposure to DPM has a significant impact on the potential health outcomes.

The guidance goes on to state that "potential TAC (toxic air contaminant) impacts are evaluated by conducting a qualitative analysis consistent with CARB and SCAQMD guidance, and may be followed by a

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<sup>1</sup> City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10



*more detailed analysis* utilizing CARB's Hotspots Analysis and Reporting Program (HARP) model where the project results in a substantial source of TACs or if a project would site sensitive land uses in proximity to TAC sources.”<sup>2</sup> The guidance does not put limitations on the types of projects to be evaluated or the duration of the potential exposure.

According to CARB, “HARP can be used by the air pollution control and air quality management districts (districts), facility operators and other organizations or individuals to promote statewide consistency, efficiency and cost-effective development of facility emission inventories and conducting health risk assessments. HARP can also be used for conducting health risk assessments used in other programs (e.g., facility permitting, *CEQA reviews*).”<sup>3,4</sup>

The City's statement in the guidance clearly indicates that the use of the HARP model (without restrictions) and its algorithms which incorporate the use of age sensitivity factors (ASFs) for carcinogens, to derive project specific health risks is appropriate. The guidance goes on to states that the HARP model has become an accepted industry standard in evaluating health impacts from TACs and providing reliable and meaningful analysis.<sup>5</sup>

Regarding the City's responses related to the use of the back-up generator and the analysis not representing any-real life scenario, I would point the City Staff to the original comments which detailed how Public Safety Power Shutoff (PSPS) events continue to impact Los Angeles. PSPS events occur with increasing frequency, and result in many hours of back-up generator operation. Power outages occur throughout Los Angeles on a daily basis. According to the Los Angeles Department of Water And Power (LA-DWP), as of noon of the day of this letter 3 separate outages were occurring in Downtown Los Angeles. The outages were assumed to last an average of 8-10 hours.

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<sup>2</sup> City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10

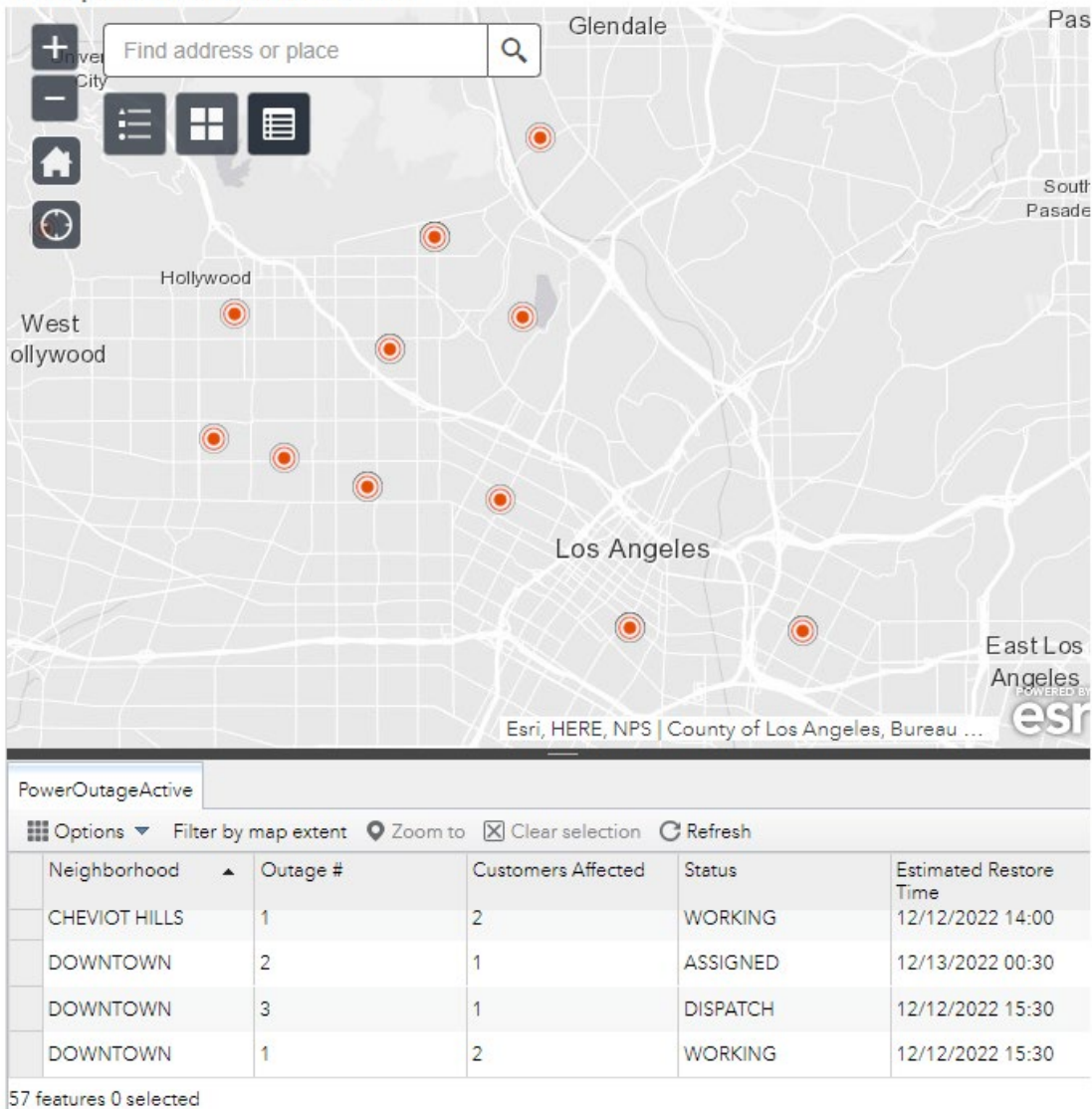
<sup>3</sup> CARB. 2022. Hot Spots Analysis & Reporting Program: About. <https://ww2.arb.ca.gov/our-work/programs/hot-spots-analysis-reporting-program/about>

<sup>4</sup> CARB and CAPCOA. 2015. Risk Management Guidance For Stationary Sources of Air Toxics. Pg 40. [https://ww2.arb.ca.gov/sites/default/files/classic/toxics/rma/rmgssat.pdf?\\_ga=2.71249616.1384737318.1660245722-1818700787.1659738080](https://ww2.arb.ca.gov/sites/default/files/classic/toxics/rma/rmgssat.pdf?_ga=2.71249616.1384737318.1660245722-1818700787.1659738080)

<sup>5</sup> City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 36

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Last Updated on: 12/12/2022 12:15 PM



## Conclusion

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

Sincerely,