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**VIA EMAIL**

Darlene Navarrete  
City of Los Angeles  
200 North Spring Street, Room 750  
Los Angeles, CA 90012  
**Email:** [darlene.navarrete@lacity.org](mailto:darlene.navarrete@lacity.org)

May Sirinopwongsagon, City Planner  
Department of City Planning  
City of Los Angeles  
200 North Spring Street, Room 763  
Los Angeles, CA 90012  
**Email:** [may.sirinopwongsagon@lacity.org](mailto:may.sirinopwongsagon@lacity.org)

**Re: Comments on the Initial Study/Mitigated Negative Declaration for the Sepulveda LLC Apartments Project (ENV-2016-2752-MND; CPC-2016-2751-VZC-DB-SPR)**

Dear Ms. Ms. Navarrete, and Ms. Sirinopwongsagon,

The **Coalition for Responsible Equitable Economic Development (CREED LA)** is writing to provide comments on the Initial Study and Mitigated Negative Declaration (MND) prepared by the City of Los Angeles (City) for the Sepulveda LLC Apartments Project (“Project”) (ENV-2016-2752-MND; CPC-2016-2751-VZC-DB-SPR) proposed by Sepulveda Apartments LLC (Applicant).

The Applicant proposes “the demolition of a former commercial plant nursery and associated surface parking for the construction of a multi-story residential apartment complex. The base of the Project would contain parking, providing approximately 557 automobile spaces and approximately 405 bicycle parking spaces. Rising from this podium would be four apartment

structures that would contain a total of 364 dwelling units. The Applicant has proposed to set aside 44 of the units as affordable at the very-low income level. The buildings would range from 45-85 feet in height.”<sup>1</sup>

Pursuant to the California Environmental Quality Act (CEQA), the City published a Mitigated Negative Declaration (ENV-2016-2752-MND) for the Project. A MND may be prepared for a project when the initial study has identified potentially significant effects on the environment, but “(1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.”<sup>2</sup>

Based on our review of the MND and supporting documentation, we find that the MND fails to comply with the requirements of CEQA. Considering the whole record, it is reasonable to conclude that the MND fails to assess potential environmental impacts of key components of the Project, and there is a fair argument that the Project will result in potentially significant direct and indirect impacts to air quality, greenhouse gas emissions, wastewater facilities, and cumulative effects. Thus, the MND fails to propose measures that can reduce those impacts to a less than significant level. We also request additional time to submit evidence from our Air Quality and Greenhouse Gas emissions experts.

The Project is discretionary, not by right. The Applicant is requesting discretionary actions including Vesting Zone Change, Density Bonus With 2 On-Menu Incentives, and Site Plan Review for the Project. The City has the discretion to deny the requests. We urge the City not to approve the Project until an Environmental Impact Report (EIR) is prepared that adequately analyzes the Project’s potentially significant direct, indirect, and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts.

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<sup>1</sup> MND p. I-1

<sup>2</sup> Pub. Resources Code §§ 21064.5.

## 1. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential resident and worker health and safety hazards and environmental and public service impacts of the Project. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and their members and their families and other individuals who live, work, recreate and raise their families in the City, including Los Angeles residents Shomari Davis, Luther Medina, and John Ferruccio. The Project's environmental and health impacts would directly affect these individuals and other members.

Individual members may also work on the Project itself, thus be directly exposed to any health 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.

## 2. AN EIR IS REQUIRED

“In CEQA, the Legislature sought to protect the environment by the establishment of administrative procedures drafted to ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.”<sup>3</sup> CEQA requires public agencies to prepare an EIR for projects that might have a significant impact on the environment.<sup>4</sup> The preparation and circulation of an EIR is more than a technical hurdle for agencies and applicants to endure. The purpose of the EIR is to provide public agencies and the public detailed information about how a proposed project will affect the environment, how the effects can be minimized, and alternatives to the project.<sup>5</sup> The EIR, therefore, serves “to inform the public and responsible officials of the environmental consequences of their decisions before they are made, thereby protecting not only the environment but also informed self-government.”<sup>6</sup>

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<sup>3</sup> *Friends of the College of San Mateo Gardens v. San Mateo County Community College District et al.* quoting *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74 (*No Oil*).

<sup>4</sup> CEQA Guidelines §§ 15003; §§21151 (a); §§21080; §§21100 (a).

<sup>5</sup> Pub. Resources Code §21061.

<sup>6</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, quoting *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376 (*Laurel Heights*).

CEQA entails a strong presumption in favor of requiring EIRs. Courts have held that if there is substantial evidence in the record to support a fair argument of a possible significant adverse environmental impact then an EIR must be prepared. The fair argument standard creates a “low threshold” favoring environmental review through an EIR rather than issuing a negative declaration.<sup>7</sup> Under the fair argument standard, it takes only one piece of substantial evidence showing that a project may have a significant adverse impact to require preparation of a full EIR not matter how much evidence supports an MND. CEQA defines substantial evidence as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”<sup>8</sup> Substantial evidence includes “facts, reasonable assumptions predicated upon facts, or expert opinion supported by facts.”<sup>9</sup>

With respect to this Project, there is substantial evidence to support a fair argument that the Project may have a significant environmental impact. First, the MND fails to adequately describe the Project such that some aspects of the environmental analysis are impermissibly narrow, minimize the Project’s environmental impacts, and inherently unreliable. Second, the City fails to provide substantial evidence to support its finding that the Project will have a less than significant impact on the environment. Third, we offer facts and reasonable assumptions predicated upon facts that the Project will have a significant effect on the environment. Subsequently, the City must prepare an EIR for the Project.

### **3. MND FAILS TO ADEQUATELY DESCRIBE THE PROJECT**

Within the context of CEQA, a project refers to the “whole of an action” and the underlying activity being approved.<sup>10</sup> Indeed, “This broad definition is intended to provide the maximum protection of the environment.”<sup>11</sup> In a general sense, all activities necessary or reasonably anticipated for the operation of a project should be considered integral components of the project. In the same vein, CEQA mandates that “all phases of project planning,

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<sup>7</sup> *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

<sup>8</sup> Pub. Resources Code §§ 15384 (a).

<sup>9</sup> Pub. Resources Code §§ 15384 (b).

<sup>10</sup> Pub. Resources Code §§ 15378 (c)

<sup>11</sup> AEP CEQA Portal Project Description, p 2. Document can be found at <https://ceqaportal.org/tp/Project%20Description%2003-23-161.pdf>

implementation, and operation must be considered in the Initial Study of the project”<sup>12</sup> and courts have emphasized the importance of adhering to this mandate.<sup>13</sup>

In light of this mandate, a project’s description “should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.”<sup>14</sup> At a minimum, this requirement reasonably implies that the MND should contain enough information, including a description of the project’s technical, economic and environmental characteristics, so as to meaningfully assess the project’s environmental effects. Without an accurate and complete project description, environmental analysis will be impermissibly narrow, thus minimizing the project’s impacts and undercutting public review.<sup>15</sup>

A description of a project’s technical characteristics should reasonably include construction activities. Construction activities are an inevitable component of the Project that include but not limited to demolition/site clearing, site preparation, and building construction.<sup>16</sup> A complete description of this component is important so that the public and decision makers can meaningfully assess the Project’s potential impacts. Further, without this information, there is no support for the City’s conclusion that the Project’s environmental impacts are less than significant. Yet, the MND fails to identify and describe the following critical aspects of the construction phase;

**a) The Project’s Construction Parking and Staging Areas:** The MND does not indicate the size of parking or staging areas, or where they will be located. The MND states that “site deliveries and staging of all equipment and materials would be organized in the most efficient manner possible on site to mitigate any temporary impacts on the neighborhood and surrounding traffic.”<sup>17</sup> This description of the Project’s construction staging and parking does not provide sufficient information to assess the Project’s impacts on the environment. Depending on the use, size, surface composition and location, the Project’s staging and parking areas could cause unanalyzed and unmitigated impacts including traffic, noise, air quality, and greenhouse gas

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<sup>12</sup> Pub. Resources Code §§ 15063

<sup>13</sup> *Antioch v Pittsburg* (1986) 187 Cal. App. 3d 1325, citing *City of Carmel-by-the-sea v. Board of Supervisors of Monterey County* 183 Cal. App. 3d 229. the court

<sup>14</sup> Pub. Resources Code §§ 15124

<sup>15</sup> Laurel Heights.

<sup>16</sup> MND p. 2.0-11.

<sup>17</sup> *Ibid*

emissions even if organized in the most efficient manner possible. The City must adequately describe the Project's construction staging and parking areas so that decision makers and the public can adequately assess the Project's impacts.

**b) The Project's Water Usage:** The MND also does not include a complete and accurate description of the Project's water usage. The MND states that (in the Project's air quality emissions calculations) "these calculations assume that appropriate dust control measures would be implemented as part of the proposed Project during each phase of development, as required by SCAQMD Rule 403..."<sup>18</sup> While it is not clear which best available control measures under Rule 403 the Project will implement, in the Air Quality calculations for the Project the measures include watering the project site to control dust. The MND fails to describe the amount of water necessary to wet disturbed portions of the Project site during the 18-20 months of construction.<sup>19</sup> In addition, the MND fails to provide evidence that the (undetermined) amount of water required for construction is available from service providers. The description of water consumption in the MND clearly accounts for operational rather than construction uses.<sup>20</sup> The MND must provide the amount of water necessary to comply with Rule 403 and the capacity of service providers to provide that amount of water so that the public and decision makers can meaningfully assess the Project's potential impacts. Without this information, the MND's conclusion that the Project has less than significant impact to water supplies is not based on substantial evidence.

CEQA does not require a MND to describe and include every minute detail of the construction process. But at the very least the MND should provide sufficient details to evaluate and review the Project's environmental impact. The environmental document must disclose information that is needed for a reasoned analysis of the issues.<sup>21</sup> Since the MND fails to describe key components of the construction phase, the environmental analysis is limited and potentially minimizes the Project's impacts. The MND's sufficiency as an informational document is therefore questionable, contrary to CEQA requirements.<sup>22</sup>

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<sup>18</sup> MND p. 4.0-10

<sup>19</sup> Ibid. p. 2.0-11

<sup>20</sup> Ibid. p. 4.0-74

<sup>21</sup> Madera Oversight Coalition v. County of Madera (2011) 199 Cal. App. 4<sup>th</sup> 48, p. 104.

<sup>22</sup> Laurel Heights, 392.

#### **4. SUBSTANTIAL EVIDENCE SHOWS THAT THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS THAT REQUIRE THE CITY TO PREPARE AN EIR**

Under CEQA, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.<sup>23</sup> An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.<sup>24</sup> "If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect."<sup>25</sup>

As discussed below, there is a fair argument supported by substantial evidence that the Project may result in significant impacts related to on air quality, greenhouse gas emissions, wastewater, and cumulative effects. The City is therefore required to prepare an EIR to evaluate the Project's impacts and propose all mitigation measures that are necessary to reduce those impacts to a less-than-significant level.

##### **I. AIR QUALITY ANALYSIS**

We conducted a preliminary review of the MND's air quality analysis including CalEEMod file outputs, and found various conspicuous weaknesses. Subsequently, CREED LA has engaged the services of an Air Quality expert to further analyze the Air Quality models to ascertain that the calculated air emissions are reliable and based on substantial evidence. At the

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<sup>23</sup> Pub. Resources Code § 21082.2; CEQA Guidelines § 15064(f), (h); *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

<sup>24</sup> *Sierra Club v. County of Sonoma*, (1992) 6 Cal.App.4th, 1307, 1318; *see also Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 ["If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an [environmental impact report] and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact"].

<sup>25</sup> CEQA Guidelines § 15062(f).

time of submitting this letter the expert has not completed his assignment. We therefore reserve the right to submit further evidence after the comment period.

One major weakness we have found is that the MND completely fails to prepare a construction Health Risk Assessment (HRA) to analyze the health risks associated with exposure to diesel particulate matter (DPM), a Toxic Air Contaminant (TAC) during Project construction. The Project is located immediately adjacent to numerous multifamily apartment complexes, single family dwellings, and Langdon Avenue Elementary School.<sup>26</sup> Nearby sensitive receptors, including children and the elderly will be exposed to DPM emissions released through exhaust from heavy-duty equipment during Project construction. Furthermore, sensitive receptors will also be affected by the 18-wheel bottom-dump trucks travelling along the proposed haul routes. It is also highly likely that the Applicant will use industry standard heavy-duty diesel-fueled construction equipment because the MND does not propose the use of clean-fuel, hybrid, or electric construction equipment. Both factors indicate that the Project will generate vehicular trips and expose sensitive receptors to carcinogenic TACs like DPM.

Under CEQA, a lead agency must consider whether the project would expose sensitive receptors to substantial pollutant concentrations. The MND's analysis consists of a comparison of the Project's construction criteria air pollutants with the Localized Significance Thresholds ("LSTs").<sup>27</sup> Because the mitigated emissions generated during construction would not exceed these LSTs, the MND concludes that there will be a less than significant impact on nearby sensitive receptors.<sup>28</sup> This justification, however, is incorrect. The LST method only accounts for local impacts from criteria air pollutants. LST analyses do not consider toxic air contaminants ("TACs"), such as diesel particulate matter ("DPM"), a state-recognized human carcinogen.

Furthermore, the MND's conclusory statements are not based on substantial evidence. First, while the MND analyzed criterial pollutants including particulate matter (PM), and VOCs, DPM is a separately regulated TAC that contains toxic chemicals. Air districts have recently

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<sup>26</sup> MND p. 2.0-02

<sup>27</sup> MND p. 4.0-12

<sup>28</sup> MND p. 4.0-13



recognized that “TACs present an even greater health risk than previously thought.”<sup>29</sup>

Therefore, even though the MND analyzed PM emissions, it did not analyze the health effects of DPM emissions. DPM contains toxic chemicals which have entirely separate health impacts on sensitive receptors than criteria pollutants do. Indeed, SCAQMD provides a threshold of 10 in one million for determining a project’s health risk impact from TACs. Thus, the City must quantify the Project’s DPM emission and associated health risks, and compare the risks to the SCAQMD threshold to determine the Project’s health risk impact.

Second, CEQA requires the City to analyze whether the project will cause “substantial adverse effects on human beings, either directly or indirectly,” and specifically discuss the “health and safety problems cause by the physical changes” that the Project will precipitate. This required analysis is separate from the required air quality analysis for criteria pollutants. HRA incorporates the estimated construction emissions and dispersion modelling with meteorological data from the closest SCAQMD monitoring station. Third, failing to quantify the Project construction-related health risk is inconsistent with the Office of Environmental Health Hazard Assessment (OEHHA) guidance. The Project construction phase will last 18-20 months which is well above the two-month threshold for short term projects to trigger a HRA under OEHHA guidelines.<sup>30</sup> According to the OEHHA guidelines, any project that triggers a HRA should evaluate cancer exposure for the duration of the project.<sup>31</sup> Therefore, the MND’s conclusion that the health risk posed to nearby sensitive receptors from exposure to substantial air pollutants is less than significant is unsupported by substantial evidence. The City must prepare a HRA in an EIR that quantifies and evaluates the health risk from Project construction and incorporates appropriate mitigation measures to the greatest extent feasible

## II. GREENHOUSE GAS EMISSIONS

The City’s analysis of the Project’s greenhouse gas (“GHG”) emissions is inadequate for numerous reasons: A) The City has selected an invalid methodology to demonstrate a less than significant impact; B) the GHG analysis is vague and flawed; and C) the regulatory plans and

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<sup>29</sup> *Cal. Building Industry Assn. v. Bay Area Air Quality Mgm/t*, 2013 Cal. App. LEXIS 644, 7.

<sup>30</sup> Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015. [http://oehha.ca.gov/air/hot\\_spots/hotspots2015.html](http://oehha.ca.gov/air/hot_spots/hotspots2015.html)

<sup>31</sup> *Id.* P. 8-18.

policies significance threshold used to reach a less than significant conclusion is not supported by substantial evidence. We have secured the services of experts to conduct additional GHG analysis. We therefore request to submit further evidence after the comment period.

**A) Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts from Greenhouse Gas Emissions**

First, the City has selected an invalid methodology to demonstrate a less than significant impact. The City uses CalEEMod to calculate the Project's construction and operational GHG emissions, and then deducts the estimated emissions from current emissions to get the net change in emissions. The MND finds that "GHG emissions from construction activities would be 625,73 metric tons in 2018 while net increase in GHG emissions generated by the Project would be 3,033.43 MTCO<sub>2</sub>e per year."<sup>32,33</sup> The net increase is higher than SCAQMD's 3,500 MTCO<sub>2</sub>e per year threshold for residential developments.<sup>34</sup> To show a less than significant impact, the MND turns to a methodology that has been explicitly disproved by the California Supreme Court. The MND uses the Tier 4 performance standard threshold to compare the Project's GHG emissions to the emissions that would be generated by the Project in the absence of any GHG reduction measures, also known as a Business As Usual ("BAU") scenario or as a No Action Taken ("NAT") scenario.<sup>35</sup> The MND finds that the Project would achieve a 43.6 percent reduction in GHG emissions between the BAU/NAT scenario and the As Proposed scenario. Because this number is greater than the 2014 Revised Scoping Plan's statewide reduction goal of 15.3 percent, the MND concludes that "the Project would not result in a cumulatively considerable contribution to GHG emissions. Impacts would be less than significant."<sup>36</sup>

This conclusion is problematic because the above methodology was rejected by the California Supreme Court. In *Center for Biological Diversity v. California Department of Fish*

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<sup>32</sup> MND p. 4.0-28

<sup>33</sup> In Appendix A: Air Quality and Greenhouse Gas Technical Report it is unclear whether the BAU emissions of 5,373.66 MTCO<sub>2</sub>e per year is the net increase in GHG emissions generated by the Project or includes emissions generated by current uses. If the BAU emissions include current uses, then the Project achieves a 28.7 percent reduction in GHG emissions and not 43.6 percent.

<sup>34</sup> SCAQMD's 3,000 MTCO<sub>2</sub>e per year threshold is for mixed-use developments and not residential development as stated in the MND.

<sup>35</sup> MND p. 4.0-28

<sup>36</sup> MND p. 4.0-28

*and Wildlife and the Newhall Land and Farming Company (Newhall Ranch)*, the California Supreme Court held that making a straight-line comparison between statewide reduction percentage goals contained in the Scoping Plan and project-specific reductions is improper.<sup>37</sup> In *Newhall* the project EIR evaluated GHG emissions using a BAU and concluded that because the project specific GHG reduction exceeded the statewide reduction goal in the AB 32 Scoping Plan, the project's GHG emissions would be less than significant. The Supreme Court rejected this approach because the Scoping Plan's cumulative statewide objectives were not intended to serve as the basis for project level assessments.

*Newhall* makes it clear that the approach used in the MND is unsupported and improper. The City cannot use the BAU/NAT comparison with AB 32 because lack of "a quantitative equivalence between the Scoping Plan's statewide comparison" and the MND's "own project-level comparison."<sup>38</sup> The GHG analysis is essentially meaningless for CEQA purposes, and does not show that the Project's GHG impacts will be less than significant.

This is particularly important because absent the Tier 4 performance standard threshold, the MND analysis shows that there is substantial evidence to support a fair argument that the Project will have significant unmitigated climate change impacts.

### **B) Greenhouse Gas Emissions Analysis Is Flawed and Vague**

Second, even if this methodology is acceptable, which clearly it is not as explained above, the MND analysis is flawed because the analysis utilizes a wrong statewide reduction goal percentage, and the analysis' details are vague. Even if the statewide reduction goal percentage were a proper significance threshold for the Project's GHG impacts, the MND utilizes outdated GHG reduction goals for 2020. The Supreme Court in *Newhall* also recognized that "over time [,] consistency with year 2020 goals will become a less definitive guide, especially for long-term projects that will not begin operations for several years."<sup>39</sup> Though the Project is projected to begin operation in 2019, it will continue to operate after 2020. The MND's climate change analysis should be focused on meeting the State's 2030 goal, not the

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<sup>37</sup> Center for Biological Diversity v. Department of Fish and Wildlife (2015) 62 Cal.4th 204, 222-223 (*Newhall Ranch*).

<sup>38</sup> *Newhall ranch*, supra, 62 Cal. 4<sup>th</sup> at p. 227.

<sup>39</sup> *Newhall Ranch*, 62 Cal. 4<sup>th</sup> 204 at p. 223.

2020 goal. In this case, the appropriate reduction goal percentage for this Project would be Executive Order B-30-15 which requires emissions reductions above those mandated by AB 32 to reduce GHG emissions 40 percent below their 1990 levels by 2030. Some experts have calculated that to reach the 2030 statewide goal, California would have to reduce its emissions by 49 percent below the BAU levels.<sup>40</sup>

If we are to persist with using the flawed methodology, and apply the most appropriate statewide reduction goal percentage, then the Project still has a significant impact on GHG emissions. The Project achieves a 43.6 percent reduction, lower than the 49 percent below BAU levels required to achieve Executive Order B-30-15 statewide reduction goals. Furthermore, the MND does not even provide precise information regarding the “GHG Reduction Plans” referred to in the analysis. This undermines CEQA’s information sufficiency requirements because substantial evidence in the record must support any foundational assumptions used for the impacts analyses in the MND.<sup>41</sup>

### **C) The Regulatory Plans and Policies Significance Threshold Is Not Supported by Substantial Evidence**

Third, the MND implies that the Project would not have a significant effect on the environment if it is found to be consistent with the applicable regulatory plans and policies to reduce GHG emissions: Executive Orders S-3-05 and B-30-15; SB 375, SCAG’s Sustainable Communities Strategy; California Green Building Standards (CALGreen) Code, LA Green Building Ordinance, and City of Los Angeles Sustainable City pLAn.<sup>42</sup> However, the City does not provide substantial evidence to support this significance threshold. Moreover, the analysis lacks a clear demonstration on exactly how the Project is consistent with the applicable laws, regulatory plans, and policies.

CEQA Guidelines Section 15064, subdivision (h)(3) states that a lead agency can consider a project’s contribution to a cumulative effect is not cumulatively considerable if the

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<sup>40</sup> See Attachment A

<sup>41</sup> See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 568 (EIR must contain facts and analysis, not just bare conclusions).

<sup>42</sup> MND pp 4.0-29 – p. 4.0-32

project complies with an approved plan or mitigation program that i) provides specific requirements; and ii) is specified in law or adopted through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. Similarly, CEQA Guidelines Section 15064.4, subdivision (b)(3) requires that when lead agencies evaluate compliance with regulations or requirements adopted to implement statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions, such requirements “must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions.”

None of the regulatory plans and policies in the MND satisfy these CEQA Guidelines. The California Supreme Court recently declared that neither AB 32 nor the Air Resources Board’s Scoping Plan implementing the goal contained in AB 32 “constitutes a set of ‘regulations or requirements adopted to implement’ a statewide reduction plan within the meaning of Guidelines section 15064.4, subdivision (b)(3)” because neither “establishes regulations implementing, for specific projects, the Legislature’s statewide goals for reducing greenhouse gas emissions.”<sup>43</sup> While the Court sanctioned using consistency with the State’s climate goals as a significance threshold under CEQA Guidelines Section 15064.4, subdivision (b)(2), this is only permissible if the lead agency can produce substantial evidence (CEQA Guidelines, § 15064.4, subd. (b)(3) (emphasis added). The MND lacks the required substantial evidence required under CEQA Guidelines. Similarly, Executive Orders S-3-05 and B-30-15 are not valid as significance thresholds because the orders simply provide the State’s long term, midterm, and short term climate change goals without any specific requirements on how to reduce GHG emissions.

The MND also cites compliance with SB 375 and SCAG’s Sustainable Communities Strategy. However, both are relevant only for transportation emissions. California Public Resources Code, Section 21159.28, subdivision (a), states that if a residential or mixed-use residential project is consistent with the use designation, density, building intensity, and applicable policies specified for the SCS project area, then the CEQA document prepared for the project is not required to assess any project-specific or cumulative GHG impacts from cars and

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<sup>43</sup> *Newhall Ranch* 62 Cal. 4<sup>th</sup> 204 at 222-223

light-duty truck trips generated by the project or impacts on the regional transportation network. Accordingly, even if the Project is consistent with the Sustainable Communities Strategy, which is not clearly demonstrated in the MND, that would not be enough to demonstrate that the Project's total GHG impacts will be less than significant.

Regarding the City of Los Angeles Sustainable City pLAn, the MND acknowledges that "by 2017, the City will develop a comprehensive climate action and adaptation plan."<sup>44</sup> The plan has not yet been developed and is therefore not relevant to the MND's analysis. Furthermore, while the plan relies on voluntary participation, the MND does not show how the Project Applicant will participate in the plan. Therefore, there is no evidence that complying with the plan reduces the Project's significant GHG emissions to a less than significant level. Similarly, the LA Green Building Ordinance has never been examined in a GHG reduction plan in order to quantify the GHG reduction benefits. The City's Green Building Ordinance is based on the 2013 California Green Building Standards ("CALGreen") Code. In the latest draft of the Scoping Plan, the Air Resources Board notes that these statewide and local building standards are part of the solution but that "there is a need to establish a path towards transitioning to zero net carbon buildings, which will be the next generation of buildings that can contribute significantly to achieving long-term climate goals."<sup>45</sup> This suggests that much more is required than compliance with the existing green building code to ensure that the State achieves its climate goals.

CEQA Guidelines require that projects' GHG impacts subject to CEQA review must be fully evaluated and an environmental document's analysis must be supported by substantial evidence. Furthermore, CEQA Guidelines are clear that "if there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project."<sup>46</sup> In addition, GHG reduction plans must

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<sup>44</sup> MND p. 4.0-31

<sup>45</sup> Discussion Draft of 2030 Target Scoping Plan (December 2, 2016), at pp. 38-39, available at [https://www.arb.ca.gov/cc/scopingplan/2030target\\_sp\\_dd120216.pdf](https://www.arb.ca.gov/cc/scopingplan/2030target_sp_dd120216.pdf); see also [https://www.arb.ca.gov/cc/scopingplan/meetings/10\\_1\\_15slides/2015slides.pdf](https://www.arb.ca.gov/cc/scopingplan/meetings/10_1_15slides/2015slides.pdf) at slide 30 (implementation of the 2030 goal requires strengthening the CALGreen Code).

<sup>46</sup> CEQA Guidelines, § 15064, subd. (h)(3) (emphasis added).

meet certain requirements in order to use compliance with a plan as the basis of the GHG cumulative impacts analysis.<sup>47</sup> The above stated weaknesses in the MND- use of an invalid methodology, flawed and vague analysis, and use of unsupported significance threshold- mean that the analysis does not comply with CEQA requirements. As previously mentioned, the MND concedes that the Project's GHG emissions surpass SCAQMD thresholds. Therefore, an EIR must be prepared as a matter of law and impose all feasible mitigation measures.

In the EIR the City should consider the recent guidance provided by the California Air Resources Board ("CARB") in its draft 2030 Target Scoping Plan.<sup>48</sup> This is the most current information available about the GHG emissions reductions needed to achieve the State's climate goals. In the updated Scoping Plan, CARB recommends that "all new land use development implement all feasible measures to reduce GHG emissions to do its 'fair share' in supporting the State's goals" and "achieving no net increase in GHG emissions is the correct overall objective."<sup>49</sup> In addition, the Project's efficiency can be calculated in the EIR. A lead agency can demonstrate that the proposed Project is more efficient than the average project by using an efficiency standard that looks at the project's emissions as compared to its service population. This method, unlike the BAU/NAT comparison method, is still legally valid.<sup>50</sup>

### **III. UTILITIES AND SERVICE SYSTEMS- WASTEWATER FACILITIES**

Under CEQA, a project may have significant impacts if it would exceed wastewater treatment requirements or result in the construction of a new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects. The MND states that the Los Angeles Aqueduct Filtration Plant (LAAFP) in Sylmar, which is the wastewater facility serving the project area, has an average daily flow of 362 million gallons per day (mgd), below a capacity of 600 mgd. Since the Project is estimated to produce 50,120 gallons per day (gpd), the MND concludes that the impact would be less than significant.

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<sup>47</sup> Additional requirements include CEQA Guidelines Section 15183.5 (b). In order to use compliance with a plan as the basis of the GHG cumulative impacts analysis, the plan must be consistent with Section 15183.5.54.

<sup>48</sup> See 2030 Target Scoping Plan Update, Discussion Draft, available at [https://www.arb.ca.gov/cc/scopingplan/2030target\\_sp\\_dd120216.pdf](https://www.arb.ca.gov/cc/scopingplan/2030target_sp_dd120216.pdf).

<sup>49</sup> Ibid

<sup>50</sup> *Newhall Ranch*, supra, 62 Cal.4th at p. 220.

However, the analysis violates the City's CEQA Thresholds Guidelines. Per the Guidelines, if a project produces a new or increased average daily wastewater flow of 4,000 gallons per day (gpd), further analysis of the impact is required.<sup>51</sup> The sewage generation factors in the City's CEQA Thresholds estimate that a 1-bedroom apartment produces 120 gallons per day (gpd) of wastewater, 2-bedroom apartment 160 gpd, and 3-bedroom 200 gpd and retail 0.08 gpd.<sup>52</sup> The Project will contain 124 one-bedroom units, 223 two-bedroom units and 17-bedroom units.<sup>53</sup> When applying the City's sewage generation factors, the total estimated wastewater flow for the Project is 53,760 gpd.<sup>54</sup> This far exceeds the 4,000 gpd that triggers a detailed analysis of the Project's potentially significant impacts on wastewater treatment facilities.

Furthermore, the MND violates other aspects of the City's CEQA Thresholds Guidelines. First, the Guidelines state that a project would have a significant wastewater impact if "the project's additional wastewater flows would substantially or incrementally exceed the future scheduled capacity of any one treatment plant by generating flows greater than those anticipated in the wastewater Facilities Plan or General Plan and its elements."<sup>55</sup> The MND simply does not address this issue. Second, the Guidelines also require that an Initial Study/MND study cumulative impacts to "determine the combined effect of the proposed project and the related projects on the wastewater infrastructure."<sup>56</sup> This requirement is based on the fact that whereas a single project may not adversely affect the wastewater infrastructure, it may have a significant cumulative effect when considered alongside other projects in the vicinity. The MND identifies related projects within the vicinity of the Project but completely fails to compare the Project's wastewater impacts with those of the related projects.<sup>57</sup> Yet, CEQA requires lead agencies to disclose a significant cumulative impact "when the project's incremental effect is cumulatively considerable."<sup>58</sup>

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<sup>51</sup> See LA CEQA Thresholds Guide. P. M.1-1 Document can be found at <http://environmentla.org/programs/Thresholds/M-Public%20Utilities.pdf>

<sup>52</sup> Ibid.p. M.2-25

<sup>53</sup> Information collected from the Project file- Project Description document.

<sup>54</sup>  $(124*120) + (223*160) + (17*200) = 53760$

<sup>55</sup> Id. p. M.2-3

<sup>56</sup> Id. p. M.2-5.

<sup>57</sup> Substantial evidence indicates that there are at least 6 additional projects not included in the Project's cumulative analysis

<sup>58</sup> CEQA Guidelines §§15355.



The MND, therefore, violates CEQA as a matter of law and fails to comply with the City's CEQA Thresholds Guidelines. Given the Project's gdp requirements are higher than the City's threshold for a potentially significant impact, and the Project's potential cumulative effects are not identified, substantial evidence supports a fair argument that the Project may result in significant impacts on wastewater facilities requiring preparation of an EIR.

#### IV. CUMULATIVE EFFECTS

CEQA Guidelines explains that cumulative impacts are "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts."<sup>59</sup> In addition, cumulative effects result "from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time."<sup>60</sup> A lead agency must require an EIR if the project's potential environmental impacts, although individually limited, are cumulatively considerable.

The cumulative impacts analysis in the MND is inadequate and conclusory. The City relies on a list of 7 relevant projects prepared by its traffic consultant. The Traffic Impact Analysis never describes how the relevant projects were selected, other than that the list "was provided by the City of Los Angeles."<sup>61</sup> It appears that these projects were selected because they are within a certain geographic area. However, more explanation is required as to how this area was selected.<sup>62</sup> While lead agencies have discretion to select their geographic range, the selection must be supported by substantial evidence. Under relevant CEQA case law the MND's selected geographic scope of only a 2.9-mile radius around the Project site is limited<sup>63</sup> and there

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<sup>59</sup> CEQA Guidelines §§15355.

<sup>60</sup> Id.

<sup>61</sup> MND Appendix B, p. 21.

<sup>62</sup> See CEQA Guidelines, § 15130, subd. (b)(3) ("Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used."); see also *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 430 (lead agency must explain reason for limiting analysis); *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 907 (same).

<sup>63</sup> See *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1216 (cumulative impacts analysis inadequate for failing to analyze project 3.6 miles away); *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 739 (projects within 5 miles should be considered).

is no support for the MND's implication that projects that are more than 2.9 miles away would not combine with this Project's impacts. Furthermore, we know of six additional proposed or under construction projects within a 5-mile radius of the Project that should be included in the cumulative analysis list.<sup>64</sup> These include:

- 6569 North Van Nuys Blvd (4 miles away): New 6/7-story building with 184 apartment units and 21,000 sf of commercial space;
- 7111 North Sepulveda Blvd (2.3 miles away): New Construction use and maintenance of a 6-story mixed-use development including 180 apartments and approximately 4,750 sf of ground floor retail, with 2 levels of sub parking;
- 6001 Van Nuys Blvd (5 miles away): A 5-story, 384-unit residential complex with underground parking and 17,000 sf of ground-floor retail space;
- 14665 West Roscoe Blvd (1.6 miles away): Development of a mixed-use project containing 422 residential units, 25,000 sf of commercial space and associated parking facilities;
- 6500 Sepulveda Blvd (3.1 miles away): A new 160-unit apartment complex including 7 units for very-low income, and 274 car parking spaces; and
- 6530 Sepulveda Blvd (3.1 miles): A new 4-story 68-unit apartment building.

Impacts like air quality, GHG emissions, traffic, and public services affect large portions of the surrounding area and should be studied to protect the environment to the greatest extent possible.<sup>65</sup> For example, we have demonstrated that the Project could have significant GHG emissions impacts, contradicting the MND's conclusion that because the Project's individual impacts will be less than significant, the Project cannot cause a cumulative air quality impact. This area of Los Angeles is experiencing a period of growth and many of the proposed projects involve zoning changes and even general plan amendments.<sup>66</sup> This demonstrates that the current

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<sup>64</sup> This list is not exhaustive, meaning there may be additional projects. Furthermore, in only one of the six projects were the entitlements filed after the Project.

<sup>65</sup> See *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 81 (agency must "interpret the requirements of a cumulative impact analysis so as to afford the fullest possible protection to the environment").

<sup>66</sup> In all but one of the additional projects, the applicants are requesting a (Vesting) Zone Change, Height District Change, and/or General Plan Amendment.

land use plans did not anticipate this level of growth and could not have fully evaluated the cumulative effects from these projects. Ideally, the City must, at least conduct a robust cumulative impacts analysis in its project-level CEQA documents. In reality, the City has failed to conduct a sufficient cumulative impacts analysis in this MND.

## 5. CONCLUSION

CREED LA appreciates the opportunity to provide the above comments concerning the Project. This project is discretionary, not by right. The Applicant requests discretionary approvals under the City Municipal Code including Vesting Zone Change, Density Bonus With 2 On-Menu Incentives, and Site Plan Review. As such the City and its decision makers must make express findings that the Project complies with all environmental laws and promote “the general welfare.” However, the MND fails to comply with CEQA because:

- The MND fails to adequately describe the construction phase of the project including details about the staging and parking areas and the Project’s water usage;
- The MND fails to analyze the significant carcinogenic risk to nearby Sensitive Receptors;
- Whereas the Project’s GHG emissions surpass SCAQMD thresholds, the MND utilizes flawed analysis including a methodology rejected by the Court, is vague and flawed, and utilizes an unsubstantiated threshold to show the impact is less than significant;
- The MND violates CEQA as a matter of law and fails to comply with the City’s CEQA Thresholds Guidelines in its analysis of wastewater impacts; and
- The cumulative impacts analysis is flawed and underestimates potentially considerable cumulative impacts.

The City can publish an MND if there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.”<sup>67</sup> The above comments provide substantial evidence that the required finding cannot be made. Furthermore, the comments provide substantial evidence in the record to support a fair argument of a possible significant adverse environmental impact. CEQA requires the City to prepare an EIR if there is substantial evidence that any aspect of the project individually or collectively may cause a significant effect on the environment not matter how

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<sup>67</sup> Pub. Resources Code §§ 21064.5.

much evidence supports an MND. An EIR must therefore be prepared in the spirit of informing the public and responsible officials of the environmental consequences of the Project before approval decisions are considered and in protecting the environment, we urge the City to withdraw the MND and prepare an EIR for the Project. CREED LA respectfully reserves the right to supplement these comments at hearings and proceedings for this Project.<sup>68</sup>

Thank you for your consideration of these comments. We ask that they be placed in the Administrative Record for the Project.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Modrzejewski", with a long horizontal flourish extending to the right.

Jeff Modrzejewski

*Executive Director*

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<sup>68</sup> See *Communities for a Better Environment v. Richmond* (2010) 184 Cal. App 4<sup>th</sup> p. 86 (EIR invalidated based on comments submitted after Final EIR completed.) *Galante Vineyards v. Monterey Peninsula Water Management District* (1997) 60 Cal. App 4<sup>th</sup> p. 1109, 1117 (CEQA litigation not limited only to claims made during EIR comment period).

However the existing or proposed zoning may not permit this density.

Approval from Board of Public Works may be necessary before removal of any street trees in conjunction with the improvements in this tract map through Bureau of Street Services Urban Forestry Division.

Satisfactory arrangements shall be made with the Los Angeles Department of Water and Power, Power System, to pay for removal, relocation, replacement or adjustment of power facilities due to this development. The subdivider must make arrangements for the underground installation of all new utility lines in conformance with LAMC Section 17.05N.

The final map must record within 36 months of this approval, unless a time extension is granted before the end of such period.

The Advisory Agency hereby finds that this tract conforms to the California Water Code, as required by the Subdivision Map Act.

The subdivider should consult the Department of Water and Power to obtain energy saving design features which can be incorporated into the final building plans for the subject development. As part of the Total Energy Management Program of the Department of Water and Power, this no-cost consultation service will be provided to the subdivider upon his request.

#### **FINDINGS OF FACT (CEQA)**

The Department of City Planning issued Mitigated Negative Declaration No. ENV-2016-2752-MND on January 5, 2017. The Department found that potential negative impact could occur from the project's implementation due to:

- Aesthetics (light);
- Biological Resources (tree removal);
- Noise;
- Traffic

At the public hearing, a representative of a church located at 15444 West Nordhoff Street, Our Lady of Peace Catholic Church, testified regarding concerns about traffic impacts and the loss of off-site parking during construction. Subsequent to the public hearing, a letter dated January 25, 2017 (the letter is incorrectly dated as 2016) was received from CreedLA with comments regarding the analysis of the MND. The letter states that the MND fails to adequately analyze the impacts of the project on air quality, greenhouse gases, and utilities – wastewater facilities and that there is substantial evidence and a fair argument that an EIR should be required. Meridian Consultants, on behalf of the Applicant, submitted a letter dated February 9, 2017 which responds to the comments submitted by CreedLA regarding the analysis contained within the MND. The Advisory Agency considered the comments submitted during the comment period, at and after the public hearing regarding the MND. In consideration of the comments received and pursuant to Section 15074.1 of the CEQA Guidelines, the Advisory Agency modified a mitigation measure, Condition 20.CM-3(a), to include notification of Our Lady of Peace Catholic Church during the demolition, grading, and construction phase of the project.

In consideration of the analysis prepared as part of the Mitigated Negative Declaration and comments received, on the basis of the whole of the record before the lead agency, the Advisory Agency finds in its independent judgment and analysis that this project was environmentally assessed in Case No. ENV-2016-2752-MND and that an EIR is not required. The Advisory Agency hereby adopts the Mitigated Negative Declaration, Case No. ENV-2016-2752-MND, and the modified mitigation measures and determined that this project would not have a significant effect upon the environment provided that the potential impacts identified