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VIA EMAIL AND OVERNIGHT MAIL

Mr. Jordann Turner, City Planner
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Re: Comments on the Initial Study / Mitigated Negative Declaration for the Hollywood Ivar Gardens Project (ENV-2015-2895-MND; CPC 2015-2893-VZC-HD-CUB-SPR)

Dear Mr. Turner:

We write on behalf of the Coalition for Responsible Equitable Economic Development ("CREED LA"), Thomas Brown, Luther Medina, John Ferruccio, Jorge L. Aceves, John P. Bustos, Gery Kennon, Chris S. Macias and Robert E. Murphy Jr., to provide comments on the Initial Study and Mitigated Negative Declaration ("MND") prepared by the City of Los Angeles ("City") for the Hollywood Ivar Gardens Project (ENV-2015-2895-MND; CPC 2015-2893-VXC-HD-CUB-SPR) ("Project"), proposed by R.D. Olson Development ("Applicant"). The Project is proposed to be located at 6409, 6411 and 6407 W. Sunset Boulevard, 1512 N. Cahuenga Boulevard and 1511 N. Ivar Avenue in the Hollywood Community Plan Area of the City of Los Angeles. The Project involves the demolition of an existing fast food restaurant and surface parking, and the construction of a 21-story, 141,895 square-foot mixed-use building containing 275 hotel guestrooms with kitchenettes and 1,900 square feet of ground floor commercial space. The Project also includes four levels of subterranean parking. Project construction will require the export of approximately 3,882 square feet of demolition material and 56,000 cubic yards of soil.

Based upon our review of the MND and supporting documentation, we conclude that the MND fails to comply with the requirements of the California

Environmental Quality Act[1] ("CEQA"). The MND fails to provide a complete and accurate Project description and fails to identify the Project's potentially significant environmental impacts and propose measures that can reduce those impacts to a less than significant level.

As explained in these comments, there is more than a fair argument that the Project will result in potentially significant impacts to air quality and public health, and from greenhouse gas emissions and hazardous materials. The City may not approve the Vesting Zone Change, Height District Change, Conditional Use Permit, Zoning Administrator's Adjustment or Site Plan Review Findings for the Project until it prepares an environmental impact report ("EIR") that adequately analyzes the Project's potentially significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts.

We prepared these comments with the assistance of air quality and hazards experts Matt Hagemann and Jessie Jaeger of Soil/Water/Air Protection Enterprise ("SWAPE"). SWAPE's technical comments and curricula vitae are attached hereto as **Attachment A**. The City must address and respond to the comments of these experts separately.[2]

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 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 and work in the City of Los Angeles.

Individual members of CREED LA and its member organizations include Thomas Brown, Luther Medina, John Ferruccio, Jorge L. Aceves, John P. Bustos, Gery Kennon, Chris S. Macias, and Robert E. Murphy Jr., who 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.

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[1] Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").
[2] *See* CEQA Guidelines § 15088(a).

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 it less desirable for businesses to locate and people to live there. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. AN EIR IS REQUIRED

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.[3] "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."[4] 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."[5]

CEQA's purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.[6] CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the "fair argument" standard. Under that standard, a lead agency "shall" prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.[7]

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[3] See Pub. Resources Code § 21000; CEQA Guidelines § 15002.
[4] *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).
[5] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[6] *See* Pub. Resources Code § 21100.
[7] Pub. Resources Code §§21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

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

> (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur*, and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, *may* have a significant effect on the environment.[8]

Courts have held that if "no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR."[9] The fair argument standard creates a "low threshold" favoring environmental review through an EIR, rather than through issuance of a negative declaration.[10] An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.[11]

"Substantial evidence" required to support a fair argument is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."[12] Substantial evidence can be provided by technical experts or members of the public.[13]

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[8] Pub. Resources Code § 21064.5 (emphasis added).
[9] E.g. *Communities for a Better Env't. v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320.
[10] *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.
[11] *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 ("If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact").
[12] CEQA Guidelines § 15384(a).
[13] E.g. *Citizens for Responsible and Open Gov't. v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 (substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy); *see also Architectural Heritage Assn. v. County of Monterey*

According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064(f):

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

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are "fully enforceable through permit conditions, agreements, or other legally binding instruments."[14] Deferring formulation of mitigation measures to post-approval studies is generally impermissible.[15] Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.[16] If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.[17] The Courts have held that simply requiring a project applicant to obtain a future report and then comply with any recommendations that may be made based upon the report is insufficient to meet the standard for properly deferred mitigation.[18]

With respect to this Project, the MND fails to satisfy the basic purposes of CEQA. The MND fails to adequately disclose, investigate, and analyze the Project's potentially significant impacts, and fails to provide substantial evidence to conclude that impacts will be mitigated to a less than significant level. Because the MND lacks basic information regarding the Project's potentially significant impacts, the

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(2004) 122 Cal.App.4th 1095, 1117-1118 (substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing); *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

[14] CEQA Guidelines § 15126.4(a)(2).

[15] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; CEQA § 21061.

[16] *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical Gardens Foundation v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1604, fn. 5.

[17] *Id.*

[18] *Id.*

MND's conclusion that the Project will have a less than significant impact on the environment is unsupported.[19] The City failed to gather the relevant data to support its finding of no significant impacts, and substantial evidence shows that the Project may result in potentially significant impacts. Therefore, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

III. THE MND FAILS TO ADEQUATELY DESCRIBE THE PROJECT

The MND does not meet CEQA's requirements because it fails to include a complete and accurate project description, rendering the entire impact analysis inherently unreliable. An accurate and complete project description is necessary to perform an evaluation of the potential environmental effects of a proposed project.[20] Without a complete project description, the environmental analysis will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.[21] The courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."[22] Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal's benefit against its environmental costs.[23]

A. The MND Fails to Adequately Describe the Haul Route

The MND fails to adequately describe the haul route or the number of trucks that will be used to export 3,882 square feet of demolition material and 56,000 cubic yards of soil during Project construction. The MND identifies two potential haul routes: (1) 12.71 miles (each way) to the Bradley Landfill; and (2) 27.61 miles (each way) to the Manning Pit. However, the MND acknowledges that the haul route that will be used for the Project will not be determined until prior to construction.[24] Further, according to the MND, the haul route may be modified.[25] As a result, the

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[19] Pub. Resources Code § 21064.5.
[20] *See, e.g., Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.
[21] *See id.*
[22] *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.
[23] *Id.* at192-193.
[24] MND, p. II-30.
[25] *Id.*

analysis of environmental and public health and safety impacts associated with the Project's haul route has been improperly deferred.

The haul route may create a disturbance to adjacent residents and schools. Therefore, the determination of which route Project haul trucks will follow is a key determination required to inform the City's analysis of potentially significant impacts from noise, safety, traffic, and toxic air contaminant exposure to the sensitive receptors that will be affected by trucks travelling along the haul route. Depending on which haul route is selected, different homes and schools would be affected. Residents and school patrons may be required to modify their own schedules and practices in order to accommodate, or avoid the adverse effects of, the haul trucks in their neighborhood. The City must also analyze the impacts that each potential haul route will cause to the differently affected neighborhoods, and must identify appropriate mitigation measures that will mitigate significant impacts to each neighborhood.

B. The MND Fails to Adequately Describe the Project's Construction Water Demand

To reduce fugitive dust, the MND states that "[a]ll unpaved demolition and construction areas shall be wetted at least twice daily during excavation and construction," "[t]he construction area shall be kept sufficiently dampened to control dust caused by grading and hauling," [a]ll dirt/soil shall be secured by trimming, watering or other appropriate means" and "[a]ll dirt/soil materials transported off-site shall be either sufficiently watered or securely covered."[26] Yet, the MND fails to describe the amount of water necessary to water dirt, soil and other unpaved portions of the Project site during the 18 months of demolition/site clearing, excavation, grading and construction.[27] Further, the MND fails to provide any evidence that the amount of water required for construction (whatever that may be) is available from any service providers. The City must provide this basic information 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 impacts to water supply are less than significant.

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[26] *Id.*, p. III-26.
[27] *Id.*, pp. II-28-29.

C. The MND Fails to Adequately Describe Construction Parking and Staging Areas

A complete description of the Project's construction parking and staging areas is necessary to assess the Project's impacts. Project construction entails demolition, site clearing, excavation, grading and the export of soil,[28] all of which requires the use of large construction equipment. In addition, Project construction will require truck deliveries and worker vehicles. The MND fails to adequately identify where delivery trucks and worker vehicles will park or where construction equipment will be staged. The MND does not indicate the size of parking or staging areas, or where they will be located. Depending on the use, size, surface composition and location, the Project's staging and parking areas could cause unanalyzed and unmitigated impacts. 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.

IV. 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.[29] The fair argument standard creates a "low threshold" favoring environmental review through an EIR, rather than through issuance of a negative declaration or notices of exemption from CEQA.[30] An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.[31] Substantial evidence can be provided by

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[28] *Id.*

[29] 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.

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

[31] *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"].

technical experts or members of the public.[32] "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."[33]

As discussed below, there is a fair argument supported by substantial evidence that the Project may result in significant impacts on air quality and public health, and from greenhouse gas emissions and hazardous materials. The City is 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.

A. Substantial Evidence Supports a Fair Argument that Project Construction and Operation Will Cause a Significant Cancer Risk from Emissions of Toxic Air Contaminants that the MND Fails to Disclose and Mitigate

The MND concludes that the health risk posed to nearby sensitive receptors from exposure to toxic air contaminants ("TACs"), including diesel particulate matter ("DPM") emissions, from Project construction and operation would be less than significant.[34] The MND's conclusion is unsupported because the City failed to quantify the risk and compare it to applicable thresholds of significance.

The MND's "analysis" of the Project's health risks from TACs is merely a statement that: (1) the Project does not warrant the need for a health risk assessment ("HRA") because Project operation does not consist of land uses that include typical sources of toxic air contaminants; and (2) Project construction "would be subject to the regulations and laws relating to toxic air pollutants at the regional, State and federal level that would protect sensitive receptors from substantial concentrations of emissions."[35] SWAPE reviewed the MND's "analysis"

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[32] See, e.g., *Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 [substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy]; *see also Architectural Heritage Ass'n v. County of Monterey*, 122 Cal.App.4th 1095, 1117-1118 [substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing]; *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.
[33] CEQA Guidelines § 15062(f).
[34] MND, p. III-32.
[35] *Id.*

of the Project's health risks from TACs and found it to be wholly inadequate and unsupported.

First, SWAPE explains that Project operation will generate vehicle trips, which will result in in DPM emissions.[36] Thus, the MND's statement that the Project would not involve sources of TACs is entirely false. The City must quantify the DPM emissions and associated health risks from Project operation, and compare the results to the South Coast Air Quality Management District's ("SCAQMD") threshold to determine the Project's health risk impacts.

Second, SWAPE explains that even if Project construction is subject to regulations and laws related to toxic air pollutants, Project construction could still have significant health risks from TACs. This is because "current regulations can only reduce emissions; they do not get rid of them entirely."[37] Thus, the City must quantify the DPM emissions and associated health risks from Project construction, and compare the risks to the SCAQMD's threshold to determine the Project's health risk impacts.

Third, by failing to prepare a HRA, the MND is inconsistent with the Office of Environmental Health Hazard Assessment ("OEHHA") *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments* ("OEHHA Guidelines"). The OEHHA Guidelines describe the types of projects that warrant the preparation of HRAs. The OEHHA Guidelines recommend that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.[38] Project construction would last 22 months, which is significantly longer than the two-month short-term threshold set by OEHHA to trigger the requirement for a HRA. Thus, the City must prepare a HRA for Project construction. Further, the OEHHA Guidelines recommend that exposure from projects lasting more than six months should be evaluated for the duration of the project using an exposure length of 30 years. Since Project operation would last substantially longer than six months, the City must prepare a HRA for the lifetime of Project operation (likely, at least 30 years).

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[36] **Attachment A**: Letter from Matt Hagemann and Jessie Jaegar to Rachael Koss re: Comments on the Hollywood Ivar Gardens Project, July 5, 2016 ("SWAPE Comments"), p. 2.
[37] *Id.*
[38] "Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, p. 8-18.

To demonstrate the Project's potential health risks to nearby sensitive receptors, SWAPE prepared a preliminary screening-level HRA. SWAPE found that Project construction and operation would result in potentially significant health risks from DPM emissions. SWAPE used the U.S. Environmental Protection Agency's AERSCREEN model, sensitive receptor information from the MND and OEHHA guidance for its preliminary HRA. SWAPE found that Project construction would generate approximately 363 pounds of DPM over 22 months,[39] and Project operation would generate approximately 97.8 pounds of DPM per year.[40] SWAPE calculated the emission rates for Project construction and operation and, using the model, generated maximum reasonable estimates of single hour DPM concentrations from the Project. SWAPE then calculated the excess cancer risk for each sensitive receptor for adults, children and infants. SWAPE's calculations show that Project construction results in cancer risks of 8.6 (adults), 63 (children) and 120 (infants) in one million.[41] SWAPE's calculations also show that the cancer risk over the course of a residential lifetime (30 years) is 190 in one million.[42] The infant, child and lifetime cancer risks to nearby sensitive receptors all exceed the SCAQMD threshold of 10 in one million. The MND fails to disclose and mitigate the Project's significant cancer risks.

B. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts from Greenhouse Gas Emissions

To assess the Project's greenhouse gas emissions (GHG") impacts, the MND compares the Project's GHG emissions after GHG reduction measures to the business as usual scenario ("BAU") (emissions that would be generated by the Project in the absence of any GHG reduction measures). Using this method, the MND finds that the Project would achieve a 46 percent reduction in GHGs between the BAU and the proposed Project. The MND concludes that the Project would result in a less than significant impact from GHG emissions because the 46 percent reduction greatly exceeds the California Air Resources Board's ("CARB") Climate Change Scoping Plan and AB 32 statewide reduction goals.[43] The MND's analysis is flawed and its conclusion is unsupported.

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[39] SWAPE Comments, p. 3.
[40] *Id.*, p. 4.
[41] *Id.*, p. 5.
[42] *Id.*
[43] MND, p. III-51.

First, the use of CARB's Climate Change Scoping Plan and AB 32 statewide GHG reduction goals as a threshold of significance for project-specific impacts was struck down by the California Supreme Court. The California Supreme Court held that making a straight-line comparison between statewide reduction goals and project-specific reductions is improper. Without "a quantitative equivalence between the [AB 32] Scoping Plan's statewide comparison" and the MND's "own project-level comparison," the use of a BAU comparison to demonstrate consistency with GHG emission reductions set forth by AB 32, is not an acceptable method for determining CEQA impacts.[44] In *Center for Biological Diversity v. California Department of Fish and Wildlife and the Newhall Land and Farming Company* ("*Newhall*"), the project EIR evaluated GHG impacts using a BAU comparison, comparing the percent reduction in GHG emissions between the proposed project's BAU and 2020 scenarios to the statewide 2020 reduction goal in the CARB Scoping Plan. The EIR 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 result in a less than significant impact. The California Supreme Court rejected this approach, holding that agencies cannot use the statewide GHG emission reduction percentage as the CEQA significance threshold for project-specific impacts.[45]

The *Newhall* Court stated that there is "no substantial evidence that Newhall Ranch's project-level reduction of 31 percent in comparison to business as usual is consistent with achieving AB 32's statewide goal of a 29 percent reduction from business as usual..."[46] Further,

> the Scoping Plan nowhere related that statewide level of reduction effort to the percentage of reduction that would or should be required from individual projects, and nothing DFW or Newhall have cited in the administrative record indicates the required percentage reduction from business as usual is the same for an individual project as for the entire state population and economy.[47]

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[44] *Center for Biological Diversity et al. v. California Department of Fish and Wildlife and the Newhall Land and Farming Company* (2015) 62 Cal.4th 204, 227.
[45] *Newhall*, 62 Cal.4th at 204.
[46] *Id.*, p. 225.
[47] *Id.*, pp. 225-226.

Rather, "[t]he EIR simply assumes that the level of effort required in one context, a 29 percent reduction from business as usual statewide, will suffice in the other, a specific land use development."[48]

Despite this ruling, the MND relies upon the same method expressly rejected in *Newhall* to conclude that the Project's GHG emissions would result in a less than significant impact. Specifically, using the anticipated year of Project buildout, the MND takes the statewide reduction goal for 2020 and determines the percent reduction from BAU that the Project would need to meet to achieve statewide goals.[49] Using a straight-line comparison between Project-specific and statewide GHG emission reductions, the MND states that the Project would reduce its GHG emissions by 46 percent, which, according to the MND, is consistent with the statewide reduction goal.[50] As a result, the MND concludes the Project would have a less than significant impact from GHG emissions.[51] SWAPE explains that:

> [r]educing the Project's emissions to below statewide business as usual levels would not be sufficient to reduce the entire state's GHG impacts to below a level of significance unless all developments currently in operation, and all future projects in California, of any size, were also required to reduce their emissions to below business as usual by the same percentage.[52]

Newhall makes clear that the approach used in the MND is unsupported and improper. The City cannot use the statewide GHG emission reduction percentage goal as the CEQA threshold to determine whether a specific project has significant GHG emissions.

Second, the City improperly used outdated interim GHG reduction goals for 2020 that were superseded by Executive Order B-30-15. Executive Order B-30-15 requires emissions reductions above those mandated by AB 32 to reduce GHG emissions 40 percent below their 1990 levels by 2030. 1990 statewide GHG emissions are estimated to be approximately 431 million $MMTCO_2e$. Therefore, SWAPE provides that, by 2030, California will be required to reduce statewide emissions by 172 $MMTCO_2e$, which results in a statewide limit on GHG emissions

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[48] *Id.*, p. 227.
[49] MND, p. III-51.
[50] *Id.*, p. III-52.
[51] *Id.*
[52] SWAPE Comments, p. 7.

of 259 $MMTCO_2e$.[53] 2020 BAU levels are estimated to be approximately 509 $MMTCO_2e$. SWAPE explains that, to successfully reach the 2030 statewide goal of 259 $MMTCO_2e$, California would have to reduce its emissions by 49 percent below the BAU levels.[54] Thus, the Project should demonstrate, at a minimum, a reduction of 49 percent below BAU levels.[55] SWAPE notes "that this reduction percentage is applicable to statewide emissions, not project-specific emissions. Therefore, this percent reduction may be higher when scaled down to the project-level."[56]

Finally, even if the MND's approach was appropriate, the Project's GHG emissions with GHG reduction measures (the "As Proposed scenario"), the BAU GHG emissions and the percent reduction between the two scenarios were incorrectly calculated in the MND. SWAPE explains that a correct BAU analysis compares the emissions that would be generated by the Project in the absence of any GHG reduction measures to the emissions that would be generated by the Project when GHG reduction measures are included. Then, the percent reduction in GHG emissions should be compared to an applicable threshold.[57] However, the calculation in the MND improperly accounts for emissions generated by the existing land uses on the Project site. In the MND, the 46 percent reduction in GHG emissions is derived by subtracting the existing on-site emissions from the As Proposed scenario GHG emissions. SWAPE explains that is totally incorrect. The City should have compared the BAU scenario to the As Proposed scenario.[58] Further, the calculations used to estimate the BAU GHG emissions are incorrect. The BAU scenario in the MND accounts for the emissions generated by existing land uses on the site, and then compares this 46 percent reduction to the statewide reduction goal for 2020. Once again, SWAPE explains that accounting for existing GHG emissions on-site is totally incorrect.[59] As a result, the City's conclusion about the Project's impact from GHG emissions is unsupported. When the existing on-site emissions are not included in the analysis, the Project would achieve only a 13 percent reduction in GHG emissions between the BAU and As Proposed Scenarios.[60] Even if comparing a project's emission reductions to the AB 32 statewide reduction goal was proper (which it is not), the Project's GHG emissions reduction of 13

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[53] *Id.*, p. 8.
[54] *Id.*
[55] *Id.*, p. 9.
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*, pp. 9-10.

percent would not meet the 15 percent reduction required by AB 32 to reduce statewide emissions to 1990 levels by 2020. Further, the MND includes incorrect models for the BAU and the As Proposed scenarios. SWAPE explains that, according to the modeling output files, the operational year for both the As Proposed and BAU scenarios is 2018, not 2020. As a result, "the Project's GHG emissions cannot be directly compared to the GHG reduction target for 2020, as specified in CARB's Scoping Plan."[61] Therefore, the emissions estimates in the MND and associated estimated emissions reductions could not be used to show compliance with AB 32 and CARB's Scoping Plan.[62]

SWAPE conducted an independent analysis of the Project's GHG emissions using the SCAQMD screening threshold of 3,000 metric tons of carbon dioxide equivalents per year (MTCO2e/year) and found that the Project's GHG emissions would result in a significant impact. Project construction would generate 21 MTCO2e/year (when amortized over 30 years) and Project operation would generate 3,081 MTCO2e/year.[63] SWAPE found that, when the Project's amortized construction emissions and operation emissions are combined, the emissions are 3,102 MTCO2e/year, which exceed the SCAQMD's screening threshold of 3,000 MTCO2e/year.[64] This is a significant, unmitigated impact that the City failed to disclose in the MND.

C. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts from Hazardous Materials

The MND states that prior uses on the Project site include a dry cleaner and gas station. SWAPE explains that these uses may have caused subsurface contamination that would pose a health risk to construction workers, hotel guests and hotel workers.[65] Specifically, chemical contamination commonly associated with dry cleaners includes tetrachloroethylene ("PCE"), a likely carcinogen, and chemical contamination associated with gas stations includes benzene, a known human carcinogen and volatile organic compound ("VOC").[66] Hotel guests and hotel

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[61] *Id.*, p. 10.
[62] *Id.*
[63] *Id.*, p. 11.
[64] *Id.*
[65] *Id.*, p. 12.
[66] *Id.*

workers may be exposed to these contaminants through vapor intrusion, and construction workers may be exposed to these contaminants by touching contaminated soil or breathing vapors during excavation, grading and trenching.[67]

The MND states "there have been various subsurface investigations conducted on the Project Site and it received closure from the Regional Water Quality Control Board" and "the Project Site presumably met the standard at the time, indicating the solvents used for the Hollywood Laundry did not contaminate the groundwater and soil or were remediated."[68] The Phase I Environmental Site Assessment ("Phase I ESA") prepared for the Project states that "the Project site presumably met the commercial/industrial standard" under the 1986 Los Regional Water Quality Control Board closure of the gas station and, therefore, did not "find a recognized environmental condition (REC) in connection with the property in relation to the presence of a Texaco previously occupying the Project site."[69] The MND's and Phase I ESA's presumptions and conclusions are unsupported for two reasons.

First, neither the Phase I ESA nor the MND contain any sampling results supporting the presumptions and conclusions. The MND states:

> the Phase I ESA was unable to obtain information regarding the sampling activities conducted on the Project Site to determine if the Project site was monitored/sampled for contamination during former groundwater/vapor monitoring activities. As a result, the most recent levels of contamination from the Texaco and the Hollywood Laundry at the Project Site are unknown.[70]

SWAPE explains that the City must include environmental sampling results in an EIR, including results for soil vapor, PCE and benzene.[71] The EIR must compare soil sampling results to construction worker screening levels to determine the Project's potentially significant impacts from contamination.[72] Without sampling results, there is no support for the MND's and Phase I ESA's conclusions.

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[67] *Id.*
[68] MND, p. III-55.
[69] *Id.*
[70] *Id.*
[71] SWAPE Comments, p. 12.
[72] *Id.*, pp. 12-13.

Second, SWAPE explains that investigations conducted for contamination from a gas station are inapplicable to contamination from dry cleaning operations.[73] "Gas station investigations are focused on releases of petroleum compounds at locations where underground storage tanks are located. In contrast, dry cleaner investigations focus on sampling for the compound PCE in locations where it may have leaked through cracks in the concrete flooring or was dumped outside."[74] Without an investigation targeting contamination from dry cleaning operations, there is no support for the MND's and Phase I ESA's conclusions.

Rather than conduct an adequate investigation of contamination now, the MND defers an investigation and potential cleanup of contamination until after Project approval. This is a blatant violation of CEQA.[75] Moreover, the MND requires the investigation and cleanup of potentially contaminated soil and groundwater to be conducted under oversight by the Los Angeles Fire Department. SWAPE explains that the Los Angeles Fire Department is not an appropriate agency to oversee the investigation and cleanup of groundwater contamination or where human health may be at risk from sources other than underground storage tanks.[76] Rather, the Los Angeles Fire Department must refer sites with groundwater contamination to the Regional Water Quality Control Board.[77] SWAPE explains that for sites with potential health risks from contamination, the Department of Toxic Substances Control, in conjunction with the Office of Health Hazard Assessment, is the appropriate agency to oversee the environmental assessment of the site.[78]

Further, the MND completely fails to address SCAQMD Rule 1166, Volatile Organic Compound Emissions from Decontamination of Soil. Under Rule 1166, the potential for VOC contamination requires the Applicant to submit, and the SCAQMD to approve, a VOC mitigation plan prior to commencement of Project construction. Rule 1166 prohibits the uncontrolled release of VOC-contaminated soil vapor during Project construction. Rule 1166 provides that "[a] person shall not engage in or allow any on-site or off-site spreading, grading or screening of VOC-contaminated soil, which results in uncontrolled evaporation of VOC to the

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[73] *Id.*, p. 13.
[74] *Id.*
[75] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48.
[76] SWAPE Comments, pp. 13-14.
[77] *Id.*, p. 14.
[78] *Id.*

atmosphere."[79] In other words, no excavation may take place unless a Rule 1166 permit is in place for the Project. Rule 1166 also requires project applicants to implement robust vapor-control mitigation measures to ensure that the excavation of VOC-contaminated soil does not result in significant releases of VOCs through soil vapor. The Rule further requires that all persons conducting soil excavation or grading for a project in a location that may contain VOC-contaminated soil monitor for VOC contamination "*at least once every 15 minutes*" for the duration of the excavation, and *record all VOC concentration readings* in a format approved by the SCAQMD.[80] If VOC-contaminated soil is detected during excavation or grading, Rule 1166 requires the project manager to notify SCAQMD within 24 hours of the detection, and immediately implement the SCAQMD-approved mitigation plan.[81] Finally, the mitigation plan must include specific measures to reduce dust and odor, and to govern the handling and disposal of VOC-contaminated soil.[82] The MND fails to mention Rule 1166, and fails to state whether the Applicant has applied for or obtained a Rule 1166 permit, despite the fact that compliance with the Rule is mandatory.[83] The MND also fails to include any mitigation measures to address the potential risk of disturbance of VOC-contaminated soil during Project construction.

The MND's and Phase I ESA's conclusions regarding contamination on the Project site are unsupported. As it stands, substantial evidence supports a fair argument that the Project may result in health impacts to construction workers, hotel guests and hotel workers from on-site contamination. The City must prepare an EIR that quantitatively assesses and mitigates these impacts. The EIR must also discuss Rule 1166 compliance and must incorporate Rule 1166's mitigation requirements.

V. CONCLUSION

There is substantial evidence supporting a fair that the Project may result in significant adverse impacts that were not identified in the MND, and that are not adequately analyzed or mitigated. We urge the City to fulfill its responsibilities

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[79] SCAQMD Rule 1166, available at http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1166.pdf?sfvrsn=4.
[80] SCAQMD Rule 1166(c)(1)(C).
[81] *Id.* at subs. (c)(1)(D).
[82] *Id.*
[83] See *California Bldg. Industry Ass'n v. San Joaquin Valley Air Pollution Control Dist.* (2009) 178 Cal.App.4th 120, 137 (air districts are authorized to regulate and mandate mitigation requirements for development projects).

under CEQA by withdrawing the MND and preparing a legally adequate EIR to address the potentially significant impacts described in this comment letter and the attached letter. Only by complying with all applicable laws will the City and the public be able to ensure that the Project's significant environmental impacts are mitigated to less than significant levels.

Thank you for your attention to these comments.

Sincerely,

Rachael Koss

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Attachment