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By E-mail and Hand Delivery

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**Re: Comments on Final Environmental Impact Report for the ICON at
Panorama Project, 14665 Roscoe Blvd., Los Angeles, CA
(Case No. ENV-2016-1061-EIR, SCH No. 2016081031)**

Dear Ms. Zasadzien:

I am writing on behalf of the Southwest Regional Council of Carpenters ("SWRCC") and Laborers International Union of North America Local Union 300 ("LIUNA") (collectively, "Commenters") concerning the Final Environmental Impact Report ("FEIR") for the ICON at Panorama Project (Case No. ENV-2016-1061-EIR, SCH No. 2016081031) (the "Project"). This letter supplements our comments on the Draft EIR, and the Revised Draft EIR for the Project, which comments are incorporated herein by reference.

Although the City prepared a Revised Draft EIR ("RDEIR") for the Project, the RDEIR fails to address most of our comments. After reviewing the Project and the FEIR together with our expert consultants, it is evident that the FEIR contains numerous errors and omissions that preclude accurate analysis of the Project. As a result of these inadequacies, the FEIR fails as an informational document and fails to impose all feasible mitigation measures and alternatives to reduce the Project's impacts. Commenters request that the Los Angeles Department of City Planning address these shortcomings in a new revised draft environmental impact report and recirculate the document prior to considering approvals for the Project.

I. PROJECT DESCRIPTION

The Project proposes to demolish three existing but vacant commercial buildings and the removal of associated surface parking areas currently at the Project site in order to construct a 540,000 gross square foot mixed-use development on an 8.9 acre site in Los Angeles, California. The Project includes construction of seven buildings,

with approximately 200,000 square feet of commercial floor area, and 422 multi-family residential units. The Project also includes parking for approximately 1,690 vehicles and 858 bicycles. The commercial uses would be located in five separate one and two-story buildings on the south and east parts of the site, and would be served by a six-level parking structure in the center of the Project site. The Project would include a 1,200 seat multiplex cinema, restaurants and other uses. The residences would be located in two separate seven-story buildings, with five stories of residential over two levels of above-ground parking, on the western and northern parts of the Project site.

II. LEGAL STANDARDS

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report (“EIR”) (except in certain limited circumstances). See, e.g., Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Comms. for a Better Env’t v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. (“CEQA Guidelines”) § 15002(a)(1). “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.’” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. 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.” *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“Berkeley Jets”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines §15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that

any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” Pub.Res.Code (“PRC”) § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B).

The lead agency must evaluate comment on the draft EIR and prepare written responses in the final EIR. (PRC §21091(d)) The FEIR must include a “detailed” written response to all “significant environmental issues” raised by commenters. As the court stated in *City of Long Beach v. LA USD* (2009) 176 Cal.App.4th 889, 904:

The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.

The FEIR’s responses to comments must be detailed and must provide a reasoned, good faith analysis. (14 CCR §15088(c)) Failure to provide a substantive response to comment render the EIR legally inadequate. (*Rural Land Owners Assoc. v. City Council* (1983) 143 Cal.App.3d 1013, 1020).

The responses to comments on a draft EIR must state reasons for rejecting suggested mitigation measures and comments on significant environmental issues. “Conclusory statements unsupported by factual information” are not an adequate response. (14 CCR §15088(b, c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3rd 348) The need for substantive, detailed response is particularly appropriate when comments have been raised by experts or other agencies. (*Berkeley Keep Jets v. Bd. of Port Comm’rs* (2001) 91 Cal.App.4th 1344, 1367; *People v. Kern* (1976) 72 Cal.app.3d 761) A reasoned analysis of the issue and references to supporting evidence are required for substantive comments raised. (*Calif. Oak Found. v. Santa Clarita* (2005) 133 Cal.App.4th 1219)

The FEIR abjectly fails to meet these legal standards, as it is riddled with conclusory statements lacking any factual support or analysis.

III. THE FEIR FAILS TO ADEQUATELY RESPOND TO COMMENTS ON THE DEIR AND RDEIR.

A. TRAFFIC

Substantive comments were filed on the EIR’s traffic analysis by Commenters, CalTrans and others. Yet the FEIR dismisses those comments with no substantive analysis, rendering the FEIR legally inadequate.

Commenters submitted comments from traffic engineer Daniel T. Smith, PE. The EIR concludes that the Project will generate a very significant 8,000 trips per day. However, Mr. Smith concludes that this is a vast underestimation of likely Project traffic.

Mr. Smith points out that the Project will contain a 1,200 seat multiplex cinema. However, the EIR uses the traffic generation estimations for a single-screen theater. A multiplex will generate 3072 trips/day, while a single screen theater would generate only 2112 trips/day. This alone results in a underestimation of almost 1,000 trips/day. The FEIR fails to correct this error. (FEIR p. II-202).

Mr. Smith also points out that the EIR fails to properly calculate trips generated based on the square footage of the shopping center – relying on generic calculations. If done correctly, Project trips would be 5233 trips/day rather than 3416. This result in a 53% underestimation traffic. The FEIR fails to correct this error.

The EIR also fails to impose feasible mitigation measures to reduce traffic impacts. CalTrans submitted a letter requesting that the City require “fair share” funding for traffic improvement. (Comment 2-4). The FEIR refuses to require this very common mitigation measure, rejecting it for spurious legal reasons. (FEIR, p. II-19).

The EIR also relies on improper deferred mitigation to reduce traffic. The RDEIR states that a Transportation Demand Management Plan will reduce traffic by 15% but does not state what that Plan will be. This constitutes improper deferred mitigation. CEQA requires mitigation measures to be set forth in the EIR so that the public may analyze the measures and ensure their effectiveness. The FEIR falls far short of this requirement. Feasible mitigation measures for significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project. The formulation of mitigation measures generally cannot be deferred until after certification of the EIR and approval of a project. Guidelines, section 15126.4(a)(1)(B) states: "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way."

B. PUBLIC SERVICES

1. FIRE

The City of Los Angeles Fire Department filed comments stating, “**fire protection would be considered inadequate,**” based on inadequate fire stations and facilities in proximity to the Project site. (Comment 6, p.3)

The FEIR refuses to analyze this impact, stating that there would be no need to construct new fire stations and therefore no need to analyze the impact under CEQA. (FEIR, II-44). This is a patently inadequate response to comments from an expert public agency. The Los Angeles Fire Department has concluded that there would be inadequate fire protection. This may result in the loss of human life as well as environmental impacts from emissions from burning building. It is unconscionable for the FEIR to dismiss this critical comment with the back of a hand.

The FEIR takes the untenable position that CEQA is only concerned about the “environment” and not human health. Therefore the FEIR concludes that the CEQA document would only need to consider the impacts of fire safety if a new fire station would need to be constructed. This is incorrect for at least two reasons.

First, since there will be inadequate fire protection, a new fire station will be required. Thus, the CEQA document should analyze the impacts of the new station’s construction.

Second, CEQA does in fact require analysis of impacts to human health. Under CEQA, human beings are an integral part of the “environment.” An agency is required to find that a “project may have a ‘significant effect on the environment’” if, among other things, “[t]he environmental effects of a project will cause **substantial adverse effects on human beings**, either directly or indirectly[.]” (Pub. Res. Code, § 21083, subd. (b)(3); see also CEQA Guidelines, 2 § 15126.2 [noting that a project may cause a significant effect by bringing people to hazards].)

The FEIR fails to adequately respond and address the inadequate fire protection issues raised by the City’s own Fire Department. This is critically important given that the Project will include over 400 housing units and a 1200 seat cinema. It is simply unacceptable to place this number of people at known risk of fire hazard. In short, human lives are at least as important as tiger salamanders. The EIR is deficient for ignoring this obvious fact.

2. SCHOOLS

The EIR admits that the Project will result in 417 new students in the area. However, the document refuses to analyze the impacts on local schools, including the need for new school construction. The FEIR states that no analysis is required since the need for new schools may be met by portable classrooms rather than permanent school construction. (FEIR II-66).

This response is patently inadequate. The Project will create a permanent, not a temporary demand for school classrooms. The EIR proposes a short term solution to a long term issue. This mitigation is plainly inadequate and constitutes illegal deferred

mitigation in violation of CEQA. The clear result of the Project will be a need for new permanent school capacity. The EIR must describe how this need will be satisfied, and propose fair share funding to meet those needs.

3. SEWER

The City of Los Angeles Department of Sanitation submitted comments stating that there may be inadequate sewer capacity to carry sewage from the Project to the Hyperior treatment plant. (Comment 5).

The FEIR dismisses this comment and refuses to analyze the need for sewage capacity, stating, “no further analysis is necessary”. (FEIR II-37). Clearly further analysis is required, as LA Sanitation concludes that analysis is required. There are few more basic environmental issues than the proper disposal of sewage.

It is well established that when a project will create a need for additional sewage capacity, the CEQA document must analyze that impact, including how sewage will be transported and treated. The Project should cover its fair share of the costs of any sewage upgrades that may be required. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.) The EIR is legally inadequate for failing to respond substantively to LA Sanitation’s comment and failing to conduct the required analysis and mitigation of the Project’s sewage impacts.

C. AIR

The Project will have significant impacts on air quality and greenhouse gases. However, the FEIR refuses to impose feasible mitigation measures that would reduce these impacts.

Expert consulting firm, Soil Water Air Protection Enterprise (“SWAPE”) suggested numerous feasible mitigation measures. But the EIR refuses to implement these measures for legally untenable reasons.

For example, SWAPE recommended that the Project’s air quality impacts could be reduced by imposing the following measures: limit opacity to 40%.; 20% NOx reduction and 45% particulate matter reduction compared to fleet average

The FEIR rejects these measures because they are required by the Sacramento Air District, not the South Coast District. (FEIR, p. II-149; see also pp. II-135, II-144). This argument misunderstands CEQA. CEQA requires implementation of all feasible mitigation measures. It is irrelevant whether the measures were developed by one particular air district or another. The only relevant question is whether the measures of

“feasible.” Since the FEIR provides no evidence that the measures are infeasible, they should be implemented.

CEQA requires the lead agency to adopt feasible mitigation measures that will substantially lessen or avoid the Project’s potentially significant environmental impacts (Pub. Res. Code §§ 21002, 21081(a)), and describe those mitigation measures in the CEQA document. (Pub. Res. Code § 21100(b)(3); CEQA Guidelines § 15126.4.) A public agency may not rely on mitigation measures of uncertain efficacy or feasibility. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. (CEQA Guidelines § 15364.) Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. (Id. at § 15126.4(a)(2).) A lead agency may not conclude that an impact is significant and unavoidable without requiring the implementation of all feasible mitigation measures to reduce the impacts of a project to less than significant levels. (CEQA Guidelines §§ 15126.4, 15091.)

The City may not approve the Project unless it implements all feasible mitigation measures.

D. HAZARDOUS MATERIALS

Expert consultant SWAPE concluded that the EIR failed to discuss at least five (5) to seven (7) potentially contaminated sites, including underground storage tanks (USTs), lifts, clarifiers, and floor drains. These sites are identified in the Phase I Environmental Site Assessment, but ignored in the EIR. The FEIR continues to dismiss SWAPE’s concerns without adequate analysis. (FEIR II-135.)

Issues related to potentially contaminated soil are of particular concern to Commenters. Construction worker, such as Commenters, will be exposed to the highest levels of any soil contamination that may be present during Project construction and excavation. Therefore, it is utmost importance to Commenters that proper analysis be conducted up-front, prior to any Project excavation or site grading.

E. HEALTH RISK ASSESSMENT

SWAPE pointed out that the EIR relies on an outdated 2003 health risk assessment (HRA) methodology despite the fact that the California Office of Environmental Health Hazard Assessment (OEHHA) adopted updated HRA guidelines in 2015, and now applies a much more health-protective methodology. SWAPE

submits a comment letter herewith that explains that the current OEHHA guidance document applies in the South Coast Air Basin. (Exhibit A).

The Final EIR refuses to correct this error and continues to rely on the outdated and superseded OEHHA HRA guidance document. In *Lotus v. Cal. Dept. of Transp.* (2014) 223 Cal. App. 4th 645, the court held that a CEQA agency must apply the analysis developed by relevant expert agencies when analyzing the impacts of a project, even if the CEQA lead agency has not formally adopted that expert agencies methodology. Here, OEHAA is the California State Agency charged with analyzing health impacts. OEHHA has updated its HRA methodology in light of current science and expert opinion. The City must apply OEHHA's analysis.

The FEIR is legally deficient for relying on an outdated, less health protective health risk assessment methodology rather than the current OEHHA HRA guidance document.

F. ALTERNATIVES

The EIR admits that the Project will have significant unmitigated impacts, including traffic impacts. As such, it is legally required for the City to select the environmentally superior alternative that achieves Project objectives, while reducing impacts.

Traffic engineer Daniel Smith, PE, concludes that traffic impacts would be significantly reduced by adoption of the Reduced Size Alternative. The FEIR admits that the Reduced Size Alternative meets most Project objectives. (FEIR II-147). It also admits that the RSA reduces Project impacts, and is feasible. (FEIR. II-135). Nevertheless, the FEIR does not recommend adoption of the Reduced Size Alternative. As such the FEIR is legally inadequate.

Where a project is found to have significant adverse impacts, CEQA requires the adoption of a feasible alternative that meets most of the project objectives but results in fewer significant impacts. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1180-81; see also, *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322) A "feasible" alternative is one that is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. (Pub. Res. Code § 21061.1; 14 Cal. Code Regs. § 15364)

CEQA requires that an EIR provide a discussion of project alternatives that allows meaningful analysis.¹ An EIR shall describe a range of reasonable alternatives to

¹ *Laurel Heights I*, supra, 47 Cal.3d at 403.

the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.² The purpose of the discussion of alternatives is both to support the decision makers and to inform public participation. Thus, “[a]n EIR’s discussion of alternatives must contain analysis sufficient to allow informed decision making.”³ An EIR must also include “detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.”⁴

The analysis of project alternatives must contain a quantitative assessment of the impacts of the alternatives. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733-73, the court found the EIR’s discussion of a natural gas alternative to a coal-fired power plant project to be inadequate because it lacked necessary “quantitative, comparative analysis” of air emissions and water use. The court concluded that absent such data, the significance of the elimination of this impact was unknown.

The lead agency is required to select the environmentally preferable alternative unless it is infeasible. As explained by the Supreme Court, an environmentally superior alternative may not be rejected simply because it is more expensive or less profitable:

The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.

(*Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1180-81; see also, *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322)

In *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322, the court held that the county’s approval of an 80 unit hotel project over a smaller 64 unit alternative, despite recommendations to the contrary in the EIR, was not supported by substantial evidence. The EIR discussed numerous adverse environmental effects that would be caused by the 80 unit project and recommended that the developer be allowed to construct a smaller 64 unit hotel so long as certain mitigation measures were completed, including relocation of some of the proposed buildings. In evaluating whether substantial evidence supported the county’s rejection of the smaller alternative as economically infeasible, the court found that “there is no estimate of income or expenditures, and thus no evidence that a reduction of the motel from 80 to 64 units, or

² CEQA Guidelines § 15125.6.

³ *Laurel Heights I*, supra, 47 Cal.3d at 404.

⁴ *Id.* at 405.

relocation of some units, would make the project unprofitable.”⁵ Thus, the court identified three criteria that should be evaluated in a comparative analysis to determine whether a project alternative or mitigation measure would be economically feasible: (1) estimated income; (2) estimated expenditures; and (3) estimated profitability between the proposed project and alternative or with and without recommended mitigation measures. (*See also, County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376 (agency must consider small alternative to casino project); *Preservation Action Counsel v. San Jose* (2006) 141 Cal. App. 4th 1336.)

The FEIR admits that Reduced size alternative meets project objectives. (FEIR II-147). Therefore it must be selected.

G. OVERRIDING CONSIDERATIONS

The EIR admits that the Project will have significant unmitigated environmental impacts. Therefore a Statement of Overriding Considerations (SOC) is required. CEQA states that the SOC should consider both the environmental impacts of the Project as well as economic benefits such as “the provision of employment opportunities for highly trained workers.” Public Resources Code Section 21081(a)(3).

The FEIR fails to conduct such an analysis and wrongly contends that such analysis is not required. (FEIR, II-145). It is not sufficient to claim, without analysis, that a Project’s benefits outweigh its environmental impacts, without a true economic analysis that considers the quality of the jobs that will be created by the Project. The FEIR fails to include such an economic analysis. Therefore the City may not adopt a Statement of Overriding Considerations.

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⁵ *Burger v. County of Mendocino*, 45 Cal.App.3d at 326-327.

IV. CONCLUSION

For the foregoing reasons, and the reasons set forth in prior comments on the Project (including comments filed by other entities), the EIR fails to meet the requirements of CEQA. We urge the City to refuse to certify the EIR, and require preparation of a Supplemental Revised Draft EIR that addresses the deficiencies identified in this and other comment letters. Thank you for considering our comments and please include this letter in the administrative record for this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Drury", with a long, sweeping tail extending to the right.

Richard Drury