

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

TEL (650) 589-1660
FAX (650) 589-5052

nlotan@adamsbroadwell.com

SACRAMENTO OFFICE

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

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

DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
RACHAEL E. KOSS
NIRIT LOTAN
MILES F. MAURINO
COLLIN S. MCCARTHY

LAURA DEL CASTILLO
Of Counsel

September 24, 2018

Via Email Only

Advisory Agency and Hearing Officer and on behalf of City Planning Commission
City of Los Angeles
cpc@lacity.org

**Re: Comments on the Final Environmental Impact Report for the
College Station Project (SCH No. 2014061066) (Environmental Case
No. ENV-2012-2055-EIR) (CPC-2012-2054-GPA-ZC-HD-MCUP-SPR;
VTT-74200)**

Dear Advisory Agency members and Hearing Officer:

We write on behalf of the **Coalition for Responsible Equitable Economic Development ("CREED LA")**, John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias to comment on the City of Los Angeles ("City") Final Environmental Impact Report ("FEIR") and response to comments ("Responses") prepared for the College Station Project (SCH No. 2014061066) (Environmental Case No. ENV-2012-2055-EIR), along with all related applications for permits ("Project"), proposed by Chinatown Station Owner, LLC ("Applicant"). The Project proposes to construct a mixed-use transit-oriented residential and commercial project located on an approximately 4.92-acre parcel at 129-135 W. College Street and 924 N. Spring Street.

On April 30, 2018, we submitted comments on the Project's Draft EIR. The FEIR contains responses to some of our comments. However, the City's Responses and the FEIR fail to resolve all the issues we raised, as detailed below, and our comments still stand.¹ In short, the FEIR's conclusions are not supported by substantial evidence, and the FEIR must be recirculated to enable the public an opportunity to meaningfully comment on the new information it contains.

We have reviewed the FEIR and its technical appendices with the assistance of our technical consultant, air quality and hazardous resources expert, James J.J.

¹ We incorporate our April 30, 2018 comments, along with their attachments and exhibit, herein by reference.
1223-006acp

September 24, 2018

Page 2

Clark, PhD.² The attached expert comments require separate responses under CEQA, because they are based on new information that the City is required to include a recirculated Draft EIR. We reserve the right to supplement these comments at a later date, and at any later proceedings related to this Project.³

(1) The EIR must be recirculated because significant new information was added to it after the public comment period

The DEIR analysis of hazards and hazardous substances states that the Project Site is located within a “methane buffer zone.”⁴ In response to our comment regarding the City’s failure to disclose crucial information regarding the Methane mitigation measures, the City states that “a typographical error” was made that “identified the Project Site as being within a Methane Buffer Zone rather than a Methane Zone,”⁵ The City further states that “a methane investigation was undertaken by the Applicant in July 2016,” and then points to its findings which are “summarized in Chapter 3 (...) and provided in Appendix E.”⁶

The City provides no explanation as to why the July 2017 Methane Mitigation Plan, that is provided in Appendix E, was not made part of the DEIR documents and circulated for public review. The City clearly knew about the Methane Mitigation Plan at the time it released the DEIR in March 2018, as evidenced by the Plan’s inclusion of City letters and certifications. The City also fails to explain why the Project was analyzed as being in the Methane Buffer Zone rather than in the Methane Zone, despite the fact the city had the information pointing out the correct site designation. As a result, none of this information was disclosed to the public during the public review and comment period.

Recirculation of an EIR prior to certification is addressed in CEQA § 21092.1, and CEQA Guidelines §15088.5. “When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 ... but prior to certification, the public agency shall give notice again pursuant to

² Dr. Clark’s comments are attached hereto as Exhibit A.

³ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield (“Bakersfield”) (2004) 124 Cal. App. 4th 1184, 1199-1203*; see *Galante Vineyards v. Monterey Water Dist. (1997) 60 Cal. App. 4th 1109, 1121*.

⁴ DEIR, 4.5 Hazards and Hazardous Materials, p. 4.5-6.

⁵ FEIR, chapter 2 - Response to Comments, p. 2-142.

⁶ FEIR, chapter 2 - Response to Comments, p. 2-141.

4223-006nsp

September 24, 2018

Page 3

section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.”⁷

“Significant new information” may include a new significant environmental impact, a substantial increase in the severity of an environmental impact, a feasible project alternative or mitigation measure considerably different from others previously analyzed or a situation where the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.⁸ In *Mountain Lion*, the court held that the crucial stage in which the public has the opportunity to meaningfully participate and comment on an environmental document is *before* the final document is issued. The court therefore refused to allow the analysis in the draft environmental document to be “bolstered by a document that was never circulated for public comment,”⁹ stating:

Only at the stage when the draft EID is circulated can the public and outside agencies have the opportunity to analyze a proposal and submit comment. No such right exists upon issuance of a final EID unless the project is substantially modified or new information becomes available.¹⁰

In *Laurel Heights* the Supreme Court explained that Section 21092.1 favors EIR recirculation prior to certification. The Court stated:

Section 21092.1 was intended to encourage *meaningful public comment*. (See State Bar Rep., *supra*, at p. 28.) Therefore, new information that demonstrates that an EIR commented upon by the public was so fundamentally and basically inadequate or conclusory in nature that public comment was in effect meaningless triggers recirculation under section 21092.1. (See, *Mountain Lion Coalition v. Fish & Game Com.*, *supra*, 214 Cal.App.3d 1043.)¹¹

Here, due to a serious and unexplained omission on the part of the City, the public was denied an opportunity to meaningfully review and comment on the fact that the Project is in a Methane Zone and on crucial analysis regarding the impacts from

⁷ PRC § 21092.1.

⁸ CCR § 15088.5.

⁹ *Mountain Lion Coal. v. Fish & Game Com.*, 214 Cal. App. 3d 1043, 1052.

¹⁰ *Mountain Lion Coal. v. Fish & Game Com.*, 214 Cal. App. 3d 1043, 1052. (EID is essentially the same as an EIR since the Dept. of Fish and Game had a certified environmental program).

¹¹ *Laurel Heights Impr. Assn. v. Reg. of Univ. of Cal.* (1993) 6 Cal. 4th 1112, 1130.

4223-006acp

September 24, 2018

Page 4

Methane in the Project site and the proposed mitigation plan to reduce impacts from the Methane in the site. The DEIR must therefore be revised to include this information, and be recirculated for public review and comments.

(2) The DEIR Fails to Adequately Disclose and Mitigate the Project's Significant Construction Air Quality and Public Health Impacts

In response to our comments, the City conducted and included in the FEIR a quantitative health risk assessment ("HRA").¹² The City argues that the results of the quantitative HRA demonstrate that the Project would not exceed the SCAQMD significance threshold for health risk impacts from toxic air contaminants ("TAC").¹³ As explained in Dr. Clark's comments, this conclusion is not supported by substantial evidence for three main reasons.

First, the City's argument that the Project would not exceed SCAQMD significance thresholds is based on unsubstantiated assumptions. In the CALEEMOD modeling for the construction phase of the Project, the Applicant reduced the daily trip length for trucks to 0.25 miles per trip length. As Dr. Clark explains, this value is based on an unrelated SCAQMD guidance that is applicable to school siting, but is not applicable to emissions estimate for HRA purposes. In fact, the default value in the CALEEMOD for truck trips is up to 20 miles. Therefore, explains Dr. Clark, "by limiting the daily trip lengths to 0.25 miles the FEIR underestimates the project's actual impacts without proper justification and its conclusion are not supported by substantial evidence."¹⁴

Second, the HRA fails to account for all potential impacts on public health because it fails to consider all of the toxic components emitted by diesel engines. As already explained by Dr. Clark in his previous comments,¹⁵ to properly account for health impacts, it is crucial for an HRA to consider all of the toxic components emitted by diesel engines. In its Response, the City argued that the approach proposed by Dr. Clark is double counting the cancer risks.¹⁶ However, Dr. Clark explains in his letter that the calculation of the cumulative risk from all the component parts of diesel exhaust is not double counting the risk, rather it is a

¹² FEIR, Appendix B.

¹³ FEIR, chapter 2 - Response to Comments, p. 2-175.

¹⁴ Exhibit A: Dr. James J.J. Clark comments, September 21, p. 2.

¹⁵ Dr. James J.J. Clark, Comment Letter on Proposed College Station Project, 129-135 West College Street and 924 North Spring Street, Los Angeles, CA Draft Environmental Impact Report, April 30, 2018, p. 9.

¹⁶ FEIR, chapter 2 - Response to Comments, p. 2-185.

4223-006aep

September 24, 2018

Page 5

more precise representation of the risk posed from exposure to the air toxins. Dr. Clark further demonstrates how his approach is consistent with that of the California Air Resources Board and the U.S. EPA, and how it is in fact utilized in other HRAs.¹⁷

Finally, Dr. Clark points out that the City failed to provide the complete output files of the AERMOD dispersion modeling run, despite our request for all records relied upon by the City. Because this is “the basis of determining the maximum exposed individuals and the relative ground level concentrations of DPM,”¹⁸ the City’s conclusions are not supported by substantial evidence. The City must revise the EIR to properly account for all of the Project’s impacts on public health from construction emissions, and to support the City’s conclusions with substantial evidence.

(3) The DEIR Fails to Disclose the Extent of Existing Soil and Groundwater Contamination and Related Hazards at the Project Site and Fails to Propose Mitigation

The Project site has a history of significant soil contamination related to the site’s historic uses as a rail freight yard.¹⁹ As discussed in our previous comments,²⁰ the DEIR fails to analyze the Hazardous Substances that are potentially present on the Project site and, instead, relies on the LARWQCB’s No Further Action determination letter, which was prepared in 2003 for a different project on the site, and which restricted the use of the ground level for residential use. The post-remediation HRA also identifies “outdoor workers” and “future construction workers” as categories of persons that could potentially be exposed to hazardous contamination as the result of Project construction at the site.²¹ We explained in our comments that the DEIR fails to establish an accurate baseline from which to evaluate the significance of the Project’s impacts from disturbance of contaminated soil and groundwater during Project construction.

In its Response, the City argued that the LARWQCB’s letter “cleared the Project Site for all future redevelopment, subject only to the stated Deed Restriction

¹⁷ Exhibit A: Dr. James J.J. Clark comments, September 21, p. 3-4.

¹⁸ Exhibit A: Dr. James J.J. Clark comments, September 21, p. 3.

¹⁹ DEIR, p. 4.5-1 to 4.5-2; Appendix E, 2013 Phase I Environmental Site Assessment, pp. 8-11.

²⁰ Christina M. Caro, Comments on the Draft Environmental Impact Report for the College Station Project (SCH No. 2011061066) (Environmental Case No. ENV-2012-2055-EIR), April 30, 2018, p. 19-20.

²¹ Phase I ESA, p. 10.

4223-006acp

September 24, 2018

Page 6

related to ground-floor residential uses” and that the issue of the Project’s compliance with the Deed Restriction “has been fully resolved through modifications to the Project” that prohibit residential use on the ground level.²²

This response ignores the fact that the LARWQCB’s letter, when addressing the future mixed use project contemplated at the time, explicitly stated “there are no planned underground structures, green areas, or unpaved areas at the site.”²³ The proposed modified Project, however, would include one level of subterranean parking,²⁴ as well as over 15,000 sf of publicly accessible open space.²⁵ These underground structures and the ground-disturbance that comes with it were not examined by the LARWQCB when the letter was issued, and therefore no substantial evidence supports the City’s conclusion that the impacts from hazardous substances in the ground will be less than significant.

The DEIR must be revised to include a current Phase II ESA which quantifies the current level of soil and groundwater contamination in all areas of the Project site that will be disturbed during Project construction. Once identified, the contamination levels should be compared to the California Human Health Screening Levels (“CHHSLs”) published by the Office of Environmental Health and Hazard Assessment (“OEHHA”).²⁶ Soil and groundwater that contains one or more contaminants at levels above those identified in the CHHSLs should be considered “impacted,” and appropriate mitigation measures identified to reduce contamination to less than significant levels. This information must then be included in a revised Draft EIR and circulated for public review, as required by CEQA.

Thank you for your attention to these comments.

Sincerely,
Nirit Lotan

CC: Johnny.Le@lacity.org
Attachments
NL:acp

²² FEIR, chapter 2 - Response to Comments, p. 2-157.

²³ February 20, 2003, LARWQCB Letter re No Further Action - Parcel PA-018, 924 North Spring Street, Los Angeles (“No Further Action Letter”), p. 2.

²⁴ FEIR, Chapter 3, p. 3-30.

²⁵ FEIR, Chapter 3, p. 3-27.

²⁶ Available at <http://oehha.ca.gov/chhsltable>.
4223-006acp