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September 7, 2016

**VIA EMAIL AND OVERNIGHT MAIL**

Mr. Jordann Turner, City Planner  
Department of City Planning  
City of Los Angeles  
200 North Spring Street, Room 750  
Los Angeles, CA 90012  
**Email:** [jordann.turner@lacity.org](mailto:jordann.turner@lacity.org)

**Re: 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"), Luther Medina, John Ferruccio, Jorge L. Aceves, John P. Bustos, Gery Kennon, Chris S. Macias and Robert E. Murphy Jr., to respond to the Department of City Planning Recommendation Report ("Staff Report") for the September 8, 2016 City Planning Commission hearing 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"). On July 6, 2016, we submitted comments on the Initial Study and Mitigated Negative Declaration ("MND") prepared by the City of Los Angeles ("City") for the Project. The Staff Report contains responses to our comments. However, the Staff Report fails to resolve the issues we raised, as detailed below, and our comments still stand.<sup>1</sup>

In short, the MND still fails to comply with the requirements of the California Environmental Quality Act<sup>2</sup> ("CEQA") because it fails to identify the Project's potentially significant impacts to air quality and public health, and from

<sup>1</sup> We incorporate our July 6, 2016 comments herein by reference.

<sup>2</sup> Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").

September 7, 2016

Page 2

greenhouse gas emissions and hazardous materials, and fails to propose measures that can reduce those impacts to a less than significant level. Therefore, 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 impacts and incorporates all feasible mitigation measures to avoid or minimize these impacts.

We prepared this response to the Staff Report with the assistance of air quality and hazards experts Matt Hagemann and Jessie Jaeger of Soil/Water/Air Protection Enterprise ("SWAPE"). SWAPE's response to the Staff Report is attached hereto as **Attachment A**.

**I. THE CITY MUST PREPARE AN EIR BECAUSE SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS**

We previously explained that 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.<sup>3</sup> The fair argument standard creates a "low threshold" favoring environmental review through an EIR, rather than through issuance of a negative declaration.<sup>4</sup> An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.<sup>5</sup> Substantial evidence can be provided by technical

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<sup>3</sup> 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.

<sup>4</sup>*Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

<sup>5</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"].

experts or members of the public.<sup>6</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>7</sup>

Our previous comments showed that there is more than 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 Staff Report does not change these conclusions. Therefore, 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 Still Supports a Fair Argument that the Project Will Cause a Significant, Unmitigated Cancer Risk from Toxic Air Contaminants Emissions**

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.<sup>8</sup> We previously explained that the MND’s conclusion is unsupported because the City failed to quantify the risk and compare it to applicable thresholds of significance. We also provided substantial evidence that the Project would result in potentially significant health risks from DPM emissions.

The Staff Report response to our comments states that:

The requirement to prepare a construction or operational health risk assessment pursuant to OEHHHA Guidelines is not required under CEQA or any required permits or approvals. Based on the relatively low emissions

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<sup>6</sup>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.

<sup>7</sup> CEQA Guidelines § 15062(f).

<sup>8</sup> MND, p. III-32.



associated with PM<sub>10</sub> and PM<sub>2.5</sub> during both construction and operation, there is no evidence to suggest that the Proposed Project would generate diesel emissions that are excessive or above acceptable levels that already occur within the environment. Furthermore, as discussed in greater detail below, the screening level analysis presented in Comment 3.3 does not accurately reflect the project's characteristics or exposure pathways to sensitive receptors.<sup>9</sup>

SWAPE reviewed the Staff Report response and found it to be incorrect for several reasons.

First, there is not substantial evidence to support the Staff Report's argument that the Project's "relatively low emissions associated with PM<sub>10</sub> and PM<sub>2.5</sub> during both construction and operation" means that the Project would not result in significant public health impacts. On the contrary, we previously provided substantial evidence supporting a fair argument that the (even relatively low) Project emissions from DPM *will* result in significant cancer risks. This is precisely why the City should prepare a quantitative health risk assessment ("HRA") – to disclose and analyze the Project's health risks from air pollutants, and compare the risks to applicable thresholds of significance.<sup>10</sup>

Second, the South Coast Air Quality Management District ("SCAQMD") *does* recommend that HRAs be prepared for development projects subject to CEQA. In fact, the SCAQMD's *Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis* provides guidance for quantifying cancer risks from DPM from truck idling and movement, among other sources.<sup>11</sup> Indeed, SWAPE previously provided evidence that it is the Project's DPM emissions from trucks and off-road heavy equipment that will cause significant health risks. Therefore, the Staff Report is completely unsupported and the MND is inconsistent with SCAQMD CEQA guidance.

Finally, the Staff Report's argument that SWAPE's screening level analysis "does not accurately reflect the project's characteristics or exposure pathways to sensitive receptors" is entirely incorrect. SWAPE prepared a screening level HRA

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<sup>9</sup> Staff Report, Response to Comments, p. 31.

<sup>10</sup> See **Attachment A**, p. 2.

<sup>11</sup> *Id.*, p. 3.

consistent with the Office of Environmental Health Hazard Assessment *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments* (“OEHHA Guidelines”). SWAPE also explained that the purpose of conducting the screening level analysis is to determine if a more refined HRA is necessary. Specifically, if screening level HRA results are above applicable thresholds, then a more refined HRA that is tailored to site-specific meteorology and equipment usage schedules must be conducted. Accordingly, SWAPE conducted a screening level analysis, found that the results exceeded applicable thresholds, and advised the City that a more refined HRA must be conducted for the Project.<sup>12</sup> The City simply refuses to abide by the OEHHA Guidelines, and refuses to adequately analyze the Project’s potentially significant cancer risks in an EIR, as required by CEQA.

**B. Substantial Evidence Still Supports a Fair Argument that the Project Will Cause a Potentially Significant, Unmitigated Impact from Greenhouse Gas Emissions**

SWAPE previously showed that the MND fails to ensure that the Project complies with the greenhouse gas emissions (“GHG”) 2030 reduction goals required by Executive Order B-30-15. SWAPE recommended that, to demonstrate compliance with Executive Order B-30-15, the City should scale down the 49% statewide reduction target to a project level goal. This will provide a threshold against which to measure the Project’s impacts from GHG emissions.

The Staff Report does not demonstrate the Project’s compliance with Executive Order B-30-15. Rather, the Staff Report incorrectly argues that the Project need only comply with 2020 reduction goals.<sup>13</sup> The interim GHG reduction goals for 2020 were superseded by Executive Order B-30-15, which requires emissions reductions above those mandated by AB 32. Thus, the Staff Report is unsupported. Moreover, as we previously explained, 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 percent would not even meet the 15 percent reduction required by AB 32 to reduce statewide emissions to 1990 levels by 2020.

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<sup>12</sup>*Id.*, p. 4.

<sup>13</sup> Staff Report, Response to Comments, p. 36.

SWAPE previously provided 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 (MTCO<sub>2</sub>e/year) and found that the Project's GHG emissions would result in a significant impact. Project construction would generate 21 MTCO<sub>2</sub>e/year (when amortized over 30 years) and Project operation would generate 3,081 MTCO<sub>2</sub>e/year. SWAPE found that, when the Project's amortized construction emissions and operation emissions are combined, the emissions are 3,102 MTCO<sub>2</sub>e/year, which exceed the SCAQMD's screening threshold of 3,000 MTCO<sub>2</sub>e/year. This remains a significant, unmitigated impact that the City still fails to disclose.

**C. Substantial Evidence Supports a Fair Argument that the Project May Result in a Significant, Unmitigated Impact from Hazardous Materials**

SWAPE previously explained that the former dry cleaning and gas station uses on the Project site may have caused subsurface contamination that would pose a health risk to construction workers, hotel guests and hotel workers. 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"). SWAPE further explained that hotel guests and hotel 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.

Rather than analyze the Project's potentially significant impacts from on-site contamination, the MND merely 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."<sup>14</sup> 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

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<sup>14</sup> MND, p. III-55.

with the property in relation to the presence of a Texaco previously occupying the Project site.”<sup>15</sup>

We previously explained that the MND’s and Phase I ESA’s presumptions and conclusions are unsupported because (1) neither contain any supporting sampling results, and (2) investigations conducted for contamination from a gas station are inapplicable to contamination from dry cleaning operations. The Staff Report fails to substantively respond to, or resolve, these issues.<sup>16</sup> Therefore, we reiterate the need for the City to include environmental sampling results in an EIR, including results for soil vapor, PCE and benzene. The EIR must compare soil sampling results to construction worker screening levels to determine the Project’s potentially significant impacts from contamination. Without sampling results, there is no support for the MND’s and Phase I ESA’s conclusions. In addition, an investigation targeting contamination from dry cleaning operations must be performed and the results included in an EIR. Without a targeted investigation, there is no support for the MND’s and Phase I ESA’s conclusions.

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.

## II. CONCLUSION

The Staff Report fails to resolve the issues we raised in our comments on the MND. 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, once again, urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing a legally adequate EIR to address the Project’s potentially significant impacts. 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.

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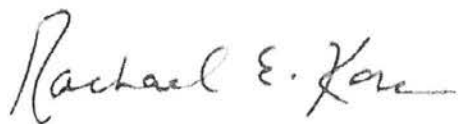
<sup>15</sup>*Id.*

<sup>16</sup>Attachment A, p. 6.

September 7, 2016  
Page 8

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in cursive script that reads "Rachael E. Koss". The signature is written in dark ink and is positioned above the printed name.

Rachael E. Koss

REK:ieh

Attachment