



## CITY OF LONG BEACH

DEPARTMENT OF DEVELOPMENT SERVICES

333 West Ocean Blvd., 5<sup>th</sup> Floor

Long Beach, CA 90802

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PLANNING BUREAU

## APPLICATION FOR APPEAL

An appeal is hereby made to Your Honorable Body from the decision of the

- ☐ Site Plan Review Committee  
☐ Zoning Administrator  
☒ Planning Commission  
☐ Cultural Heritage Commission

Which was taken on the 7th day of September, 20 17.Project Address: 6400 E. Pacific Coast Highway

I/We, your appellant(s), hereby respectfully request that Your Honorable Body **reject** the decision and ☐ **Approve** / ☒ **Deny** the application or permit in question.

ALL INFORMATION BELOW IS REQUIRED

**Reasons for Appeal:** The EIR does not comply with the California Environmental Quality Act because it fails to adequately disclose, analyze or mitigate the Project's significant air quality impacts from NOx emissions and impacts from GHG emissions. The EIR also fails to impose feasible measures to reduce the Project's significant traffic impacts. Finally, to move forward with the Project, CEQA requires the City to find that the Project's benefits, including employment opportunities for highly trained workers, outweigh its significant unavoidable impacts. Please see attached.

Appellant Name(s): Coalition for Responsible Equitable Economic DevelopmentOrganization (if representing) c/o R. Koss, Adams Broadwell Joseph & CardozoAddress: 601 Gateway Blvd., Suite 1000City South San Francisco State CA ZIP 94080 Phone 650-589-1660Signature(s) *Rachael Koss* Date 09/13/17

- A separate appeal form is required for each appellant party, except for appellants from the same address, or an appellant representing an organization.
- Appeals must be filed within 10 days after the decision is made (LBMC 21.21.502).
- You must have established *aggrieved* status by presenting oral or written testimony at the hearing where the decision was rendered; otherwise, you may not appeal the decision.
- See reverse of this form for the statutory provisions on the appeal process.

BELOW THIS LINE FOR STAFF USE ONLY

☐ Appeal by Applicant
 ☒ Appeal by Third Party
Received by: *TS*Case No.: 1609-22Appeal Filing Date: 9/15/17Fee: \$100☒ Fee PaidProject (receipt) No.: 40101

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LINDA T. SOBCZYNSKI

September 7, 2017

**BY EMAIL AND HAND DELIVERY**

Mr. Craig Chalfant, Planner  
Planning Bureau, Development Services Department  
City of Long Beach  
333 W. Ocean Boulevard, 5th Floor  
Long Beach, CA 90802  
Email: [craig.chalfant@longbeach.gov](mailto:craig.chalfant@longbeach.gov)

Re: **Comments on the FEIR for the 2nd and PCH Project**  
**(SCH No. 2014031059)**

Dear Mr. Chalfant:

We write on behalf of the **Coalition for Responsible Equitable Economic Development ("CREED LA")**, Kevin Norton, Mike Layton, Piedmont Brown, Jerry Luthilie, Manny Solis, Donna Williamson, Carlos Parra, Cesar Avila Montes, Valentino Avalos, and Frank Natale to provide comments on the Final Environmental Impact Report ("FEIR") prepared by the City of Long Beach ("City") for the 2nd and PCH Project (SCH No. 2014031059) ("Project") proposed by PCH Property, LLC ("Applicant"), pursuant to the California Environmental Quality Act ("CEQA").<sup>1</sup>

On June 8, 2017, CREED LA provided comments on the Draft Environmental Impact Report ("DEIR") prepared for the Project, identifying many fatal defects in the document. The City has revised its air quality analysis in response to our comments, but other issues remain. The FEIR still fails to adequately disclose, analyze and mitigate the Project's potentially significant impacts related to air quality and greenhouse gas emissions ("GHG"). Additionally, by declaring that many of its traffic impacts are infeasible without proposing substitute measures,

<sup>1</sup> Pub. Resources Code, §§ 21000 et seq.



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the City has failed to comply with CEQA. Because of these errors, the City must prepare a revised EIR and recirculate the updated document for public review.

We prepared these comments with the assistance of air quality and hazards experts Matt Hagemann and Hadley Nolan of Soil/Water/Air Protection Enterprise ("SWAPE"). SWAPE's technical comments ("SWAPE Comments") are attached hereto and are incorporated by reference.

## 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 the 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, Ironworkers Local 433 and Reinforcing Ironworkers Local 416, along with their members, their families, and other individuals who live and work in Los Angeles and surrounding communities like Long Beach.

Individual members of CREED LA and its member organizations include Kevin Norton, Mike Layton, Piedmont Brown, Jerry Luthilie, Manny Solis, Donna Williamson, Carlos Parra, Cesar Avila Montes, Valentino Avalos, and Frank Natale. These individuals live, work, recreate, and raise their families in Long Beach. 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. 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 the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

## II. THE FEIR IS NOT IN COMPLIANCE WITH CEQA

### A. Recirculation Is Required Because The Project Would Cause Significant Environmental Impacts That Have Not Yet Been Disclosed to the Public

Despite updating some aspects of its analysis in the FEIR in response to our comments on the DEIR, the City has still failed to acknowledge potentially significant impacts, as demonstrated below. The City must disclose these potentially significant impacts in an updated EIR and that revised EIR must be recirculated for public comment and review.<sup>2</sup>

#### 1. Potentially Significant NOx Emissions During Construction

Our air quality experts, SWAPE, identified discrepancies in the air quality analysis conducted in the DEIR and found that, when correctly analyzed, the Project would have a significant impact with regard to NOx emissions during construction. The City reviewed these discrepancies and found that they had merit, warranting an update to the air quality analysis. However, the City concluded that the construction-related NOx emissions, at 99 pounds per day, fell just short of the South Coast Air Quality Management District's ("SCAQMD") significance threshold of 100 pounds per day.<sup>3</sup> SWAPE has reviewed the FEIR's updated air quality analysis and determined that it did not address the concerns previously raised and thus there remains a potentially significant environmental impact that has not been disclosed and mitigated.<sup>4</sup>

First, the updated analysis continues to use an incorrect number of vendor and hauling trips. According to the CalEEMod User's Guide, each hauling trip is considered to be two separate trips, one trip to the site, and one trip away from the site.<sup>5</sup> Despite this fact, the analysis contained in the FEIR inputs the total number

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<sup>2</sup> See CEQA Guidelines, § 15088.5, subd. (a)(1); see also *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412; *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 108 (requiring recirculation because of new information disclosing a significant air quality impact).

<sup>3</sup> FEIR, p. II-19.

<sup>4</sup> See SWAPE Comments, p. 1.

<sup>5</sup> SWAPE Comments, p. 2.

of round trips, rather than the number of one-way trips. This conflicts with CalEEMod's guidance and calls into question the City's analysis.

Second, the City continues to use an incorrect number of haul truck trips during the grading and excavation phase. The traffic impact analysis ("TIA") did not calculate the number of vendor trips versus haul trips that would occur during this phase. Rather, it provided one number to encompass both. In order to prepare a conservative analysis, and absent any evidence to the contrary, the City should assume that all of the truck trips during this phase are hauling trucks.<sup>6</sup>

When an updated analysis is conducted using the correct inputs, as identified by SWAPE, it is clear that the Project will exceed SCAQMD's threshold for construction related NOx emissions.<sup>7</sup>

## 2. Potentially Significant Greenhouse Gas Emissions

The FEIR has also not alleviated our concerns that the threshold used by the City to analyze GHGs is not supported by substantial evidence. While a lead agency has discretion to select a significance threshold, that choice will only be upheld if founded on substantial evidence.<sup>8</sup> The threshold used by the City considers whether "the Project complies with applicable regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction of mitigation of greenhouse gas emissions," specifically the applicable Sustainable Communities Strategy, the California Air Resources Board's ("CARB") *Climate Change Scoping Plan*, and the City of Long Beach's Sustainability City Action Plan. There is no substantial evidence to support the idea that compliance with these three documents ensures that a project will have a less than significant impact on climate change.

The responses to comment state that the GHG threshold used by the City is permitted under CEQA Guidelines Section 15064(h)(3) because "a project's incremental contribution to a cumulative impact can be concluded not to be cumulatively considerable if the project would comply with an approved plan or mitigation program that provides specific requirements that would avoid or

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<sup>6</sup> SWAPE Comments, pp. 3-4.

<sup>7</sup> SWAPE Comments, p. 4.

<sup>8</sup> *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.



substantially lessen the cumulative impact within the geographic area.”<sup>9</sup> However, as we explained in our initial comment letter on the DEIR, in order to qualify as an “approved plan or mitigation program,” the requirements in Section 15183.5 must be met.<sup>10</sup> The FEIR acknowledges that there is no applicable plan in Long Beach that complies with these requirements.<sup>11</sup> The FEIR also appears to acknowledge that compliance with the applicable Sustainable Communities Strategy is not, on its own, sufficient to show a less than significant GHG impact.<sup>12</sup> Furthermore, while not acknowledged by the FEIR, we maintain that compliance with the State’s 2008 Scoping Plan is irrelevant as “the Scoping Plan does not propose statewide regulation of land use planning but relies instead on local governments.”<sup>13</sup>

Moreover, when an agency attempts to determine a project’s incremental contribution to a cumulative effect by looking at a previously approved plan or mitigation program, including “plans or regulations for the reduction of greenhouse gas emission,” this analysis must be thoughtful and thorough.<sup>14</sup> Specifically, “the lead agency should explain how the particular requirements in the plan or program ensure that the project’s incremental contribution to the cumulative effect is not cumulatively considerable.”<sup>15</sup> The City has not provided substantial evidence that

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<sup>9</sup> FEIR, p. III-271.

<sup>10</sup> See Final Statement of Reasons, *Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97*, available at [http://resources.ca.gov/ceqa/docs/Final\\_Statement\\_of\\_Reasons.pdf](http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf), at p. 27 (“The proposed section 15064.4(b)(3) is intended to be read in conjunction with the section 15064(h)(3), as proposed to be amended, and proposed section 15183.5. Those sections each indicate that local and regional plans may be developed to reduce GHG emissions. If such plans reduce community-wide emissions to a level that is less than significant, a later project that complies with the requirements in such a plan may be found to have a less than significant impact.”); see also p. 90 (“a project that is consistent with a plan that satisfies the criteria in subdivision (b) may benefit from the presumption created in sections 15064(h)(3) and 15130(d) that the project’s cumulative impacts are less than significant due to compliance with the plan”).

<sup>11</sup> FEIR, p. III-200.

<sup>12</sup> FEIR, p. III-198.

<sup>13</sup> *Center for Biological Diversity v. California Department of Fish and Wildlife* (2015) 62 Cal.4th 204, 229 (*Center for Biological Diversity*); see also pp. 222-223 (declaring that neither AB 32 nor CARB’s *Climate Change Scoping Plan* “constitutes a set of ‘regulations or requirements adopted to implement’ a statewide reduction plan within the meaning of Guidelines section 15064.4, subdivision (b)(3)” because neither “establishes regulations implementing, for specific projects, the Legislature’s statewide goals for reducing greenhouse gas emissions.”).

<sup>14</sup> CEQA Guidelines, § 15064, subd. (h)(3).

<sup>15</sup> *Ibid*; see also CEQA Guidelines, § 15183.5, subd. (b)(2).

the various plans and regulations cited in the DEIR will ensure a less than significant impact on climate change.

As stated in the FEIR, in *Center for Biological Diversity v. California Department of Fish and Wildlife* (2015) 62 Cal.4th 204, the California Supreme Court considered a pathway to compliance in which an agency evaluates the significance of a project's greenhouse gas impact by "looking to compliance with regulatory programs designed to reduce greenhouse gas emissions."<sup>16</sup> What is not included in the FEIR, is that in order to use this methodology, the lead agency must show that the efficiency and conservation methods it incorporates are "sufficient to contribute its portion of the overall greenhouse gas reductions necessary."<sup>17</sup> The City has not provided evidence that the efficiency and conservation measures cited are sufficient to address the Project's portion of the overall GHG reductions necessary to achieve the State's climate goals.

Throughout the FEIR and DEIR's GHG analysis, a "no implementation of emission reduction measures" or NIERM scenario, which is also referred to by other agencies as a "business-as-usual" or BAU scenario, is discussed. Demonstrating that the project will reduce emissions below the BAU is not sufficient to show a less than significant impact. In the *Center for Biological Diversity* decision, the lead agency's GHG analysis demonstrated that the project would have 31 percent fewer emissions than a business as usual scenario. The court found that this analysis was insufficient absent a threshold, supported by substantial evidence, establishing the percentage needed to reduce impacts to a less than significant level.<sup>18</sup> Here, the reduction from the NIERM scenario was originally 23 percent and has now been increased to 46 percent in the FEIR.<sup>19</sup> We disagree with some of the reductions taken to achieve this increase, as discussed in the attached SWAPE letter;<sup>20</sup> but regardless, there is no evidence that even a 46 percent reduction equates to a less than significant impact.

Moreover, we have provided evidence that when a proper threshold is used, like the one prepared by SCAQMD, GHG impacts would be significant. The City is correct that it is not *required* to use the GHG threshold developed by SCAQMD

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<sup>16</sup> *Center for Biological Diversity, supra*, 62 Cal.4th at p. 229; see also FEIR, p. III-199.

<sup>17</sup> *Id.* at p. 220.

<sup>18</sup> *Id.* at p. 225.

<sup>19</sup> FEIR, p. II-28.

<sup>20</sup> See SWAPE Comments, pp. 6-7.

because it has never been formally adopted. However, as noted in the DEIR, there are no formally adopted GHG thresholds available for the City to use.<sup>21</sup> Because of this, many lead agencies in the South Coast area have chosen to use the SCAQMD threshold.<sup>22</sup> When the SCAQMD threshold is applied, it is apparent that the Project will have a significant impact.

In the FEIR, the City has added additional Project design features, which are meant to reduce greenhouse gas emissions and operational NOx emissions. As discussed in the SWAPE letter, some of these reductions are not supported by substantial evidence as they conflict with the cited resource, CAPCOA's *Quantifying Greenhouse Gas Mitigation Measures* paper.<sup>23</sup>

The FEIR also includes conflicting information on the total annual GHG emissions. The revised DEIR language states that the new "net" GHG emissions from the Project will be 10,080 MTCO<sub>2</sub>e per year.<sup>24</sup> The response to comments says that this is incorrect and the net annual emissions, as revised, will be 7,357 MTCO<sub>2</sub>e per year.<sup>25</sup> The response cites Appendix D to support this figure. However, Appendix D provides a different amount: 7,261 MTCO<sub>2</sub>e per year.<sup>26</sup> Regardless, even the lowest annual emissions, 7,261, divided by the number of employees, 903, would still result in a 8.0 MTCO<sub>2</sub>e per year, per service population. The SCAQMD efficiency threshold for 2020 is almost half of that at 4.8 MTCO<sub>2</sub>e per year, per service population.<sup>27</sup> Because the SCAQMD threshold is exceeded, there is substantial evidence that the Project may have a potentially significant impact on climate change unless additional onsite or offsite measures are incorporated.

Contrary to the response to comments' implication that a service population-based efficiency threshold is inappropriate for retail projects,<sup>28</sup> these efficiency

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<sup>21</sup> DEIR, p. IV.E-38.

<sup>22</sup> See SWAPE Comments, p. 6.

<sup>23</sup> SWAPE Comments, pp. 6-7.

<sup>24</sup> Note that footnote (a) states that this figure is the "net" amount as it already "reflect[s] emission from operation of the proposed buildings less existing uses to be removed." FEIR, Revised Table IV.E-12, p. II-29.

<sup>25</sup> FEIR, p. III-274.

<sup>26</sup> FEIR-D, p. 10. This appears to be because the consultant further reduced the annual emissions by 96 due to 250 kilowatt photovoltaic solar panels. See FEIR, p. 14 of PDF. No explanation is provided as to why this figure was changed in the response to comments.

<sup>27</sup> See SWAPE Comments, p. 8.

<sup>28</sup> FEIR, p. III-275.



thresholds are common among the air districts and can be used on retail projects.<sup>29</sup> For example, the Bay Area Air Quality Management District has a service population efficiency threshold and service population is defined as "residents + employees."<sup>30</sup>

In conclusion, we remain concerned that the GHG threshold used by the City is not supported by substantial evidence. When a proper threshold is used, it is clear that the Project will have a significant impact, which must be disclosed and properly mitigated in compliance with CEQA.

**B. The City Must Propose Substitute Traffic Mitigation Measures to Address Significant Traffic Impacts**

The DEIR acknowledged that the Project would have a significant impact on traffic and proposed a number of mitigation measures to lessen this impact. The FEIR amends the language in the DEIR to state that the mitigation measures it relied on are infeasible due to the need to acquire a private right-of-way.<sup>31</sup> It is no longer clear if the City intends to pursue these measures, as lead agencies are not required to propose or analyze a mitigation measure that cannot be legally imposed.<sup>32</sup> However, when a lead agency determines that mitigation measures are infeasible, it must suggest substitute mitigation measures that can be implemented in their place. The City has not proposed any substitute measures to compensate for the measures that have been deemed infeasible.

**C. The Statement of Overriding Consideration Must Consider Whether the Project Provides Employment Opportunities for Highly Trained Workers**

As previously stated, the City concluded in the FEIR that the Project will have significant and unavoidable environmental impacts related to operational air

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<sup>29</sup> See CAPCOA, *CEQA and Climate Change*, available at <http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf> at pp. 62-63 (analyzing a commercial project using the traditional definition of service population).

<sup>30</sup> See Attachment A of Resolution 2010-06, available at [http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/Board%20Resolution%20Adopting%20CEQA%20Thresholds 6 2 10.ashx](http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/Board%20Resolution%20Adopting%20CEQA%20Thresholds%206%202%2010.ashx)

<sup>31</sup> See FEIR, pp. II-13 to II-17 and II-36 to II-39.

<sup>32</sup> CEQA Guidelines, 15126.4(a)(5).

quality emissions and traffic impacts.<sup>33</sup> Therefore, in order to approve the Project, CEQA requires the City to adopt a statement of overriding considerations, providing that the Project's overriding benefits outweigh its environmental harm.<sup>34</sup> An agency's determination that a project's benefits outweigh its significant, unavoidable impacts "lies at the core of the lead agency's discretionary responsibility under CEQA."<sup>35</sup>

The City must set forth the reasons for its action, pointing to supporting substantial evidence in the administrative record.<sup>36</sup> This requirement reflects the policy that public agencies must weigh a project's benefits against its unavoidable environmental impacts, and may find the adverse impacts acceptable only if the benefits outweigh the impacts.<sup>37</sup> Importantly, a statement of overriding considerations is legally inadequate if it fails to accurately characterize the relative harms and benefits of a project.<sup>38</sup>

In this case, the City must find that the Project's significant, unavoidable impacts are outweighed by the Project's benefits to the community. CEQA specifically references employment opportunities for highly trained workers as a factor to be considered in making the determination of overriding benefits.<sup>39</sup> Currently, there is not substantial evidence in the record showing that the Project's significant, unavoidable impacts are outweighed by benefits to the community. The Applicant has not made any commitments to employ graduates of state approved apprenticeship programs or taken other steps to ensure employment of highly trained and skilled craft workers on Project construction. Therefore, the City would not fulfill its obligations under CEQA if it adopted a statement of overriding considerations and approved the Project.

We urge the City to prepare and circulate a revised EIR which identifies the Project's potentially significant impacts, requires all feasible mitigation measures and analyzes all feasible alternatives to reduce impacts to a less than significant

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<sup>33</sup> FEIR, pp. I-13, I-15.

<sup>34</sup> CEQA Guidelines, § 15043.

<sup>35</sup> *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

<sup>36</sup> Pub. Resources Code, § 21081, subd. (b); CEQA Guidelines, § 15093, subds. (a) and (b); *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 357.

<sup>37</sup> Pub. Resources Code, § 21081(b); CEQA Guidelines, § 15093, subds. (a) and (b)

<sup>38</sup> *Woodward Park Homeowners Association v. City of Fresno* (2007) 150 Cal.App.4th 683, 717.

<sup>39</sup> Pub. Resources Code, § 21081, subds. (a)(3) and (b).

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level. If a Statement of Overriding Considerations is adopted for the Project, we urge the City to consider whether the Project will result in employment opportunities for highly trained workers.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Natalie Kuffel". The signature is fluid and cursive, with the first name "Natalie" written in a larger, more prominent script than the last name "Kuffel".

Natalie B. Kuffel

NBK:lj1