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June 9, 2017

VIA EMAIL AND OVERNIGHT MAIL

Mr. John Kim
Planning Bureau, Development Services Department
City of Long Beach
333 W. Ocean Boulevard, 5th Floor
Long Beach, CA 90802
Email: john.kim@longbeach.gov

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

Dear Mr. Kim:

We write on behalf of the **Coalition for Responsible Equitable Economic Development ("CREED LA")**, John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, Chris S. Macias, and Robert E. Murphy Jr., to provide comments on the Draft Environmental Impact Report ("DEIR") prepared by the City of Long Beach ("City") for the 2nd and PCH Project (SCH No. 2014031059) ("Project"), proposed by PCH Property, LLC ("Applicant").

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The Project would be located at 6400 E. Pacific Coast Highway, bounded by 2nd Street to the north, Pacific Coast Highway to the east, a retail shopping center to the south, and Marina Drive to the west. The Project site is currently developed with the SeaPort Marina Hotel. The Project involves the removal of the existing buildings and parking lot and construction of approximately 95,000 square feet of retail uses, a 55,000 square foot grocery store, a 25,000 square foot fitness/health club, and approximately 70,000 square feet of restaurant uses, as well as 1,150 parking spaces.

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June 9, 2017

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The DEIR's comment deadline was June 5, 2017. We contacted the City on May 22, 2017 to request an extension due the fact that multiple appendices to the DEIR were inaccessible from the City's website. Additionally, CREED LA did not receive notice of the DEIR, despite submitting a letter to the City on December 8, 2016, requesting notification of any document released pursuant to the California Environmental Quality Act¹ ("CEQA").² On May 23, 2017, Advance Planning Officer Christopher Koontz responded to this request and stated "staff will be glad to accept your comments up to 5:00 P.M. on Friday June 9, 2017."³

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Based upon our review of the DEIR and supporting documentation, we conclude that the DEIR fails to comply with the requirements of CEQA. As explained more fully below, the DEIR did not disclose two potentially significant impacts and failed to consider feasible mitigation for an impact deemed significant and unavoidable. As a result of its shortcomings, the DEIR lacks substantial evidence to support its conclusions and fails to properly mitigate the Project's significant environmental impacts. The DEIR's numerous defects render it inadequate as an informational document. In light of the DEIR's fundamentally flawed nature, the comments contained in this letter should be viewed as illustrative of the problems with the document, rather than as a comprehensive catalogue of the document's deficiencies. Based on the findings of this comment letter, a revised DEIR must be prepared and recirculated before the City may legally approve the Project.

18-5

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 C**.⁴ The City must separately respond to these technical comments.

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¹ Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").

² See **Attachment A**, Letter from Natalie Kuffel to John Kim, Craig Chalfant, and Christopher Cun, Re: Request for Extension of Public Comment Period on 2nd and PCH Project DEIR (SCH No. 2014031059), May 22, 2017. CREED LA's December 8, 2016 letter also requested all records related to the Project under the California Public Records Act. This request was never acknowledged or satisfied.

³ See **Attachment B**, email from Christopher Koontz to Natalie Kuffel and Lorrie Lele, re: Request for Extension - Comment Period regarding 2nd and PCH Project DEIR, May 23, 2017.

⁴ **Attachment C**, Letter from Matt Hagemann and Jessie Jaeger to Natalie Kuffel re: Comments on 2nd and PCH Project, May 30, 2017 ("SWAPE Comments").

I. STATEMENT OF INTEREST

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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, along with their members, 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 John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, Chris S. Macias, and Robert E. Murphy Jr. These individuals 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. 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 DEIR IS NOT IN COMPLIANCE WITH CEQA

18-8

CEQA has two basic purposes, neither of which the DEIR satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.⁵ CEQA requires that an agency analyze potentially significant environmental impacts in an EIR.⁶ The EIR should not rely on scientifically outdated information to assess the significance of impacts,

⁵ CEQA Guidelines, § 15002, subd. (a)(1).

⁶ See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.

and should result from “extensive research and information gathering,” including consultation with state and federal agencies, local officials, and the interested public.⁷ To be adequate, the EIR should evidence the lead agency’s good faith effort at full disclosure.⁸ 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.”⁹ “Thus, the EIR protects not only the environment but also informed self-government.”¹⁰

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.¹¹ The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to “identify ways that environmental damage can be avoided or significantly reduced.”¹² If a project has a significant effect on the environment, the agency may approve the project only upon a finding 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” specified in CEQA section 21081.¹³

As these comments will demonstrate, the DEIR fails to comply with the requirements of CEQA and may not be used as the basis for approving the Project. It fails in significant aspects to perform its function as an informational document that is meant “to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment” and “to list ways in which the significant effects of such a project might be minimized.”¹⁴

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⁷ *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344, 1367 (*Berkeley Jets*); *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 620.

⁸ CEQA Guidelines, § 15151; see also *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 406 (*Laurel Heights I*).

⁹ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹⁰ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).

¹¹ CEQA Guidelines, § 15002, subd. (a)(2)-(3); *Berkeley Jets*, *supra*, 91 Cal.App.4th at 1354.

¹² CEQA Guidelines, § 15002, subd. (a)(2).

¹³ CEQA Guidelines, § 15092, subd. (b)(2)(A)-(B).

¹⁴ *Laurel Heights I*, *supra*, 47 Cal.3d at p. 391.

The DEIR must be withdrawn and revised to address these errors and deficiencies. Because of the substantial omissions in the information disclosed in the DEIR, revisions necessary to comply with CEQA will be, by definition, significant. In addition, substantial revision will be required to address significant impacts that were not disclosed in the DEIR. Because these revisions are significant, the revised DEIR will need to be recirculated for additional public comment.¹⁵

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A. The DEIR Fails to Disclose Significant Construction Emissions.

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The DEIR relies upon an incorrect number of worker, vendor, and hauling trips to estimate the Project's construction emissions. As a result, the Project's construction emissions and associated impacts are underestimated and the DEIR fails to disclose a potentially significant impact. The air quality analysis must be updated and recirculated before the Project can be approved.

Our air quality expert, SWAPE, has reviewed the Project's CalEEMod output files and found that an incorrect number of worker, vendor, and hauling trips were inputted for each phase of Project construction.¹⁶ The phases of construction are: Demolition, Site Grading/Excavation, Building Foundation/Framing/Construction, and Paving/Concrete/Landscape. The first two phases would generate demolition debris and soil materials, which would be hauled offsite.

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The DEIR's Traffic Impact Analysis estimating the number of hauling trips required to construct the Project. For the Demolition phase, 50 daily truck trips were estimated over the 45 day period, for a total of 2,250 hauling trips.¹⁷ For the Site Grading/Excavation phase, 40 daily truck trips were estimated over the 88 day period, for a total of 3,520 hauling trips.¹⁸ The Traffic Impact Analysis also supplied estimates for delivery/vendor trips and worker trips as follows:¹⁹

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¹⁵ Pub. Resources Code, § 21091.1; CEQA Guidelines, § 15088.5.

¹⁶ SWAPE Comments, p. 2.

¹⁷ DEIR, Appendix R, Part 1, p. 85.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

Phase	# of Daily Worker Trips	# of Daily Vendor Trips	# of Total Hauling Trips
Demolition	60	0	2,250
Site Grading	40	0	3,520
Building Construction	350	100	0
Paving	60	20	0

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(Cont.)

However, when SWAPE reviewed CalEEMod output files, it discovered that these estimated trips were not consistently used in the air quality analysis. Instead, the following inputs were used:²⁰

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Phase	# of Daily Worker Trips	# of Daily Vendor Trips	# of Total Hauling Trips
Demolition (CalEEMod)	60 (40)	0 (0)	2,250 (900)
Site Grading (CalEEMod)	40 (40)	0 (10)	3,520 (910)
Building Construction (CalEEMod)	350 (350)	100 (50)	0 (0)
Paving (CalEEMod)	60 (60)	20 (10)	0 (0)

No explanation is provided as to why the CalEEMod inputs differ from the conclusions reached by the traffic experts in regard to demolition worker and hauling trips, grading vendor and hauling trips, construction vendor trips, and paving vendor trips.

²⁰ SWAPE Comments, p. 4.

When SWAPE conducted an updated air quality analysis that consistently used the information provided in the Traffic Impact Analysis, it discovered that the Project's construction-related criteria air pollutant emissions are greater than previously disclosed in the DEIR. Notably, the updated analysis also revealed that the Project's construction-related NO_x emissions of 101 lbs/day would exceed the 100 lbs/day threshold applied in the DEIR.²¹ Because this potentially significant impact was not identified in the DEIR, a revised DEIR must be prepared and recirculated.²²

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B. The DEIR Fails to Implement All Feasible Operational Mitigation Measures.

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Under CEQA, the City cannot approve the Project as proposed because there are feasible mitigation measures available which would substantially lessen one of the Project's significant environmental effects.²³ Despite concluding that the Project could cause a significant operational impact with respect to NO_x emissions, the DEIR fails to propose any mitigation measures to reduce this impact to a less than significant level. The DEIR claims that "[n]o other project design features feasible mitigation measures are available to reduce the Project's operational impact associated with regional emissions."²⁴

To the contrary, our air quality experts have identified 5-pages of mitigation measures that could feasibly be applied to the Project in order to lessen this impact.²⁵ The City must consider these mitigation measures along with any other feasible mitigation measures that may be available in a revised DEIR that is recirculated for public review.²⁶

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²¹ SWAPE Comments, pp. 4-5.

²² 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 (holding that when information added to the EIR reveals a new potentially significant impact, recirculation is required), *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).

²³ Pub. Resources Code, § 21002.

²⁴ DEIR, p. I-46.

²⁵ See SWAPE Comments, pp. 12-17.

²⁶ See CEQA Guidelines, § 15088.5, subd. (a)(3); *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 330 (holding that recirculation is required when a new mitigation measure is feasible, is considerably different from the mitigation measures already

C. The DEIR Fails to Adequately Analyze and Mitigate the Project's Greenhouse Gas Emissions.

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The City's analysis of the Project's greenhouse gas ("GHG") emissions is inadequate because it relies on a significance threshold that is not supported by substantial evidence.²⁷ The DEIR considers whether "the Project complies with applicable regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions."²⁸ Specifically, the DEIR considers consistency with the applicable RTP/SCS, the California Air Resources Board's ("CARB") *Climate Change Scoping Plan*, and the City of Long Beach's Sustainability City Action Plan.²⁹

Consistency with SB 375 and SCAG's Sustainable Communities Strategy is relevant only for projects with a residential component, and even then it is only relevant for transportation emissions. California Public Resources Code, Section 21159.28, subdivision (a), states that if a residential or mixed-use residential project is consistent with the use designation, density, building intensity, and applicable policies specified for the SCS project area, then the CEQA document prepared for the project is not required to assess any project-specific or cumulative GHG impacts from cars and light-duty truck trips generated by the project or impacts on the regional transportation network. Accordingly, even if the Project is consistent with the Sustainable Communities Strategy, that would not be enough to demonstrate that the Project's total GHG impacts will be less than significant.³⁰

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Consistency with CARB's *Climate Change Scoping Plan* is equally unsuitable for determining this Project's GHG emissions impact. In *CBD v. CDFW*, the California Supreme Court declared that neither AB 32 nor CARB's *Climate Change Scoping Plan*, which implements the goal contained in AB 32, "constitutes a set of 'regulations or requirements adopted to implement' a statewide reduction plan

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evaluated in the draft EIR, would clearly lessen the project's significant environmental impacts, and is not adopted).

²⁷ CEQA Guidelines, § 15064.7.

²⁸ DEIR, p. IV.E-39.

²⁹ *Ibid.*

³⁰ See also *CBD v. CDFW*, *supra*, 62 Cal. 4th at p. 229 (a significance analysis based on compliance with applicable regulations "only goes to impacts within the area governed by the regulations. That a project is designed to meet high building efficiency and conservation standards, for example, does not establish that its greenhouse gas emissions from transportation activities lack significant impacts").

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.”³¹

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(Cont.)

While the *CBD v. CDFW* Court sanctioned using consistency with the State’s climate goals as a significance threshold under CEQA Guidelines Section 15064.4, subdivision (b)(2), this is only permissible if the lead agency can produce substantial evidence showing that the Project will help the State achieve its goal.³² The City has not produced that substantial evidence here.

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With regard to the City of Long Beach’s Sustainability City Action Plan, this plan does not meet the requirements laid out in CEQA Guidelines Section 15183.5, subdivision (b), for GHG reduction plans. In order to use compliance with a plan as the basis of the GHG cumulative impacts analysis, the plan must be consistent with Section 15183.5.³³ [Section 15183.5 requires applicable GHG reduction plans to:

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(A) Quantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area;

(B) Establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable;

(C) Identify and analyze the greenhouse gas emissions resulting from specific actions or categories of actions anticipated within the geographic area;

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³¹ *Id.* at pp. 222-223.

³² *Id.* at pp. 225-226.

³³ 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, 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”).

(D) Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;

(E) Establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels; and

(F) Be adopted in a public process following environmental review.³⁴

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(Cont.)

The Sustainability City Action Plan from 2010 does not comply with the above requirements. It did not through the public participation process and was not evaluated in an EIR.³⁵ The City has acknowledged that the existing Sustainability City Action Plan does not qualify as a GHG reduction plan for the purposes of CEQA and is currently in the process of producing a proper climate action plan.³⁶

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Accordingly, the City's selected threshold for climate change impacts does not comply with CEQA's requirements for a GHG analysis and is not supported by substantial evidence.

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Moreover, the DEIR ignores an applicable threshold from the local air district. South Coast Air Quality Management District has created a draft threshold, which has frequently been applied by other jurisdictions to analyze a project's climate change impacts. First, a screening threshold is applied. For commercial projects, like the 2nd and PCH Project, a threshold of 1,400 MTCO₂e/year is appropriate or the City could choose to apply a 3,000 MTCO₂e/year threshold for "all non-industrial projects."³⁷ If the screening threshold is exceeded, then the agency must consider whether the project would exceed per capita efficiency targets: 4.8 MTCO₂e/sp/year for 2020 and 3.0 MTCO₂e/sp/year for 2035.

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³⁴ CEQA Guidelines, § 15183.5, subd. (b).

³⁵ See <http://www.longbeach.gov/sustainability/nature-initiatives/action-plan/>

³⁶ See https://www.opr.ca.gov/docs/Long_Beach_BP3_Report.pdf at p. 6

³⁷ Working Group Meeting 15 Minutes, available at [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf?sfvrsn=2)

In order to have a less than significant impact, both the 2020 and 2035 thresholds must be met.³⁸

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(Cont.)

The Project's annual emissions will be 14,130 MTCO₂e/year, which surpasses both the 1,400 MTCO₂e/year and the 3,000 MTCO₂e/year screening threshold.³⁹ SWAPE calculated the Project's per capita annual emissions by dividing the total annual emissions by the service population of 903 employees.⁴⁰ The result was 15.6 MTCO₂e/sp/year.⁴¹ This number substantially exceeds SCAQMD's per capita efficiency targets. This demonstrates that the Project will have a potentially significant climate change impact unless additional mitigation is imposed. Accordingly, even if the Project did comply with all the cited laws, plans, and regulations, there is substantial evidence of a significant impact.⁴²

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When imposing mitigation to lessen this significant impact, the City should consider the recent guidance provided by CARB in its 2017 Climate Change Scoping Plan Update.⁴³ This is the most current information available about the GHG emissions reductions needed to achieve the State's climate goals. Because this Project will not be operational until almost 2020, it cannot rely on outdated 2020 goals.⁴⁴ In the updated Scoping Plan, CARB recommends that "all new land use development implement all feasible measures to reduce GHG emissions to do its 'fair share' in supporting the State's goals" and states that "achieving no net increase in GHG emissions is the correct overall objective."⁴⁵

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Because this potentially significant impact was not identified in the DEIR, a revised DEIR must be prepared and recirculated.⁴⁶

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³⁸ *Ibid.* ("A question was asked whether or not a project must be less than or equal to both the 2020 and 2035 efficiency threshold in order to be considered insignificant. Staff responded yes.").

³⁹ DEIR, Table IV.E-12.

⁴⁰ See SWAPE Comments, p. 21; DEIR p. IV.J.2-7 (providing that the Project will have 903 employees).

⁴¹ SWAPE Comments, p. 21

⁴² See CEQA Guidelines, § 15064, subd. (h)(3).

⁴³ See THE 2017 CLIMATE CHANGE SCOPING PLAN UPDATE, p. 134, available at https://www.arb.ca.gov/cc/scopingplan/2030sp_pp_final.pdf

⁴⁴ *CBD v. CDFW*, *supra*, 62 Cal.4th at p. 223.

⁴⁵ 2030 Target Scoping Plan Update, *supra*, at pp. 105-106.

⁴⁶ See CEQA Guidelines, § 15088.5, subd. (a)(1).

III. CONCLUSION

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As demonstrated above, the DEIR fails to adequately disclose, evaluate, and mitigate the Project's impacts, resulting in a legally deficient CEQA document. The City must prepare a revised DEIR that addresses these inadequacies and recirculate the revised DEIR for public review.

Thank you for your attention to these comments.

Sincerely,



Natalie B. Kuffel

NBK:lj1

From: Lorrie J. LeLe [<mailto:ljlele@adamsbroadwell.com>]
Sent: Friday, June 09, 2017 9:36 AM
To: John Kim <John.Kim@longbeach.gov>
Cc: Natalie B. Kuffel <nkuffel@adamsbroadwell.com>; Jeff Modrzejewski <jeff@creedla.com>
Subject: Comments on the DEIR - 2nd and PCH Project (SCH No. 2014031059)

On behalf of the Coalition for Responsible Equitable Economic Development, John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, Chris S. Macias, and Robert E. Murphy, Jr., we submit the attached Comments on the Draft Environmental Impact Report.

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If you have any questions, please contact Natalie Kuffel directly.

Regards,

Lorrie LeLe

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