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**Via Email and Overnight Delivery**

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Re: **Comments on the Mitigated Negative Declaration for the  
Schrader Hotel Project (Environmental Case Numbers NG-18-  
028-PL. ENV-2016-3751. ENV-2016-3751-A. ENV-2016-3751-B.  
ENV-2016-3751-C. ENV-2016-3751-D. ENV-2016-3751-E. ENV-  
2016-3751-E1. ENV-2016-3751-E2. ENV-2016-3751-F. ENV-2016-  
3751-G. ENV-2016-3751-H)**

**Via Email Only:** Mindy Nguyen ([Mindy.Nguyen@lacity.org](mailto:Mindy.Nguyen@lacity.org))  
Jason Hernandez (Project Planner) ([jason.hernandez@lacity.org](mailto:jason.hernandez@lacity.org))

Dear Ms. Navarrete, Ms. Nguyen, Mr. Hernandez:

On behalf of **Coalition for Responsible Equitable Economic Development ("CREED LA")**, we submit these comments on the Mitigated Negative Declaration ("MND") for the Schrader Hotel Project (Environmental Case Numbers NG-18-028-PL. ENV-2016-3751. ENV-2016-3751-A. ENV-2016-3751-B. ENV-2016-3751-C. ENV-2016-3751-D. ENV-2016-3751-E. ENV-2016-3751-E1. ENV-2016-3751-E2. ENV-2016-3751-F. ENV-2016-3751-G. ENV-2016-3751-H) ("Project"), proposed by 1600 Hudson, LLC ("Applicant"). The Project includes the demolition of a surface parking lot for the construction, use, and maintenance of a mixed-use hotel that would contain 198 guestrooms and 5,557 square feet of restaurant, coffee bar and rooftop/lounge space to be located at 1600-1616 ½ N. Schrader Boulevard and 6533 W. Selma Avenue ("Project Site") in the City of Los Angeles ("City").

Project implementation would require a number of discretionary entitlements and related approvals, including (1) Vesting Tract Map to permit the airspace subdivision of the property; (2) Vesting Zone Change and Height District Change

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from C4-2D to [Q]C2-2D; (3) Master Conditional Use Permit for the sale and dispensing of alcoholic beverages for on-site consumption in conjunction with the proposed restaurant and bar/lounge uses; (4) Site Plan Review; and (5) Zoning Administrator's Adjustment for reduced side and rear yards.<sup>1</sup> The Applicant would also request approvals and permits from the Department of Building and Safety (and other municipal agencies) for project construction activities which may including, but are not limited to, the following: excavation, shoring, grading, foundation, haul route, and building and tenant improvements for the Project Site (collectively, the "Project Approvals").<sup>2</sup>

Based upon our review of the MND, we conclude that the MND fails to comply with the California Environmental Quality Act<sup>3</sup> ("CEQA") in numerous aspects. As explained more fully below, the MND fails to provide an accurate and complete Project description; fails to accurately disclose the extent of the Project's potentially significant impacts on air quality and GHG emissions; and fails to properly mitigate the Project's potentially significant impacts. As explained herein, there is more than a fair argument that the Project will result in potentially significant impacts relating to air quality, public health, and greenhouse gas emissions. The City may not approve the Project until it prepares an environmental impact report ("EIR") that adequately analyzes the Project's potentially significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts.

We have reviewed the MND and its technical appendices with the assistance of air quality and hazards experts Matt Hagemann and Hadley Nolan of Soil/Water/Air Protection Enterprise ("SWAPE").<sup>4</sup> We reserve the right to supplement these comments at a later date, and at any later proceedings related to this Project.<sup>5</sup>

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<sup>1</sup> MND, p. 1.

<sup>2</sup> MND, p. 1.

<sup>3</sup> Pub. Resources Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR") §§ 15000 et seq.

<sup>4</sup> SWAPE's technical comments and curriculum vitae are attached hereto as Exhibit A.

<sup>5</sup> 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.



## 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, and District Council of Iron Workers of the State of California, 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, and Chris S. Macias. 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. LEGAL BACKGROUND

CEQA is intended to provide the fullest possible protection to the environment. CEQA requires that a lead agency prepare and certify an EIR for any discretionary project that may have a significant adverse effect on the environment.<sup>6</sup> CEQA requires analysis of the "whole of an action," including the

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<sup>6</sup> PRC §§ 21002.1(a), 21100(a), 21151(a); 14 CCR §§ 15064(a)(1), (f)(1), 15367.

“direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”<sup>7</sup>

The EIR is the very heart of CEQA.<sup>8</sup> A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.<sup>9</sup> “[S]ignificant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.”<sup>10</sup> An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.”<sup>11</sup> Substantial evidence, for purposes of the fair argument standard, includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”<sup>12</sup>

Whether a fair argument exists is a question of law that the court reviews de novo, with a preference for resolving doubts in favor of environmental review.<sup>13</sup> In reviewing a decision to prepare a negative declaration rather than an EIR, courts “do not defer to the agency’s determination.”<sup>14</sup>

The standard creates a “low threshold” for requiring preparation of an EIR, and affords no deference to the agency’s determination. Where substantial evidence supporting a fair argument of significant impacts is presented, the lead agency must prepare an EIR “even though it may also be presented with other substantial evidence that the project will not have a significant effect.”<sup>15</sup> A reviewing court

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<sup>7</sup> PRC § 21065; CEQA Guidelines § 15378(A).

<sup>8</sup> *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App.4th 903, 926-27; *Sundstrom v. County of Mendocino* (1974) 202 Cal.App.3d 296, 304.

<sup>9</sup> PRC § 21151; 14 CCR § 15064(f); *Citizens for Responsible Equitable Envt’l Dev. v. City of Chula Vista* (“CREED”) (2011) 197 Cal.App.4th 327, 330-31; *Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319 (“CBE v. SCAQMD”).

<sup>10</sup> PRC § 21068; 14 CCR § 15382; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1581.

<sup>11</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.

<sup>12</sup> PRC § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.

<sup>13</sup> *Id.*; *Pocket Protectors*, 124 Cal.App. 4th at 927.

<sup>14</sup> *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318.

<sup>15</sup> PRC § 21151(a); 14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 927; *County Sanitation Dist. No. 2*, 127 Cal.App.4th at 1579 (“where the question is the sufficiency of the evidence to support a fair argument, deference to the agency’s determination is not appropriate.”) (quoting *Sierra Club*).



must require an EIR if the record contains any “substantial evidence” suggesting that a project “may have an adverse environmental effect” -- even if contrary evidence exists to support the agency’s decision.<sup>16</sup>

Where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the effects to be significant and prepare an EIR.<sup>17</sup> In short, when “expert opinions clash, an EIR should be done.”<sup>18</sup> “It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project.”<sup>19</sup> In the context of reviewing a mitigated negative declaration, “neither the lead agency nor a court may ‘weigh’ conflicting substantial evidence to determine whether an EIR must be prepared in the first instance.”<sup>20</sup> Where such substantial evidence is presented, “evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact.”<sup>21</sup>

The fair argument test requires the preparation of an EIR where “there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.”<sup>22</sup>

### **III. THE MND FAILS TO ADEQUATELY DESCRIBE THE PROJECT**

An accurate and complete project description is necessary to perform an evaluation of the potential environmental effects of a proposed project.<sup>23</sup> Without a complete project description, the environmental analysis will be impermissibly

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<sup>16</sup> *Mejia*, 130 Cal.App.4th at 332-33.

<sup>17</sup> *Pocket Protectors*, 124 Cal.App.4th at 935; *Sierra Club*, supra, 6 Cal.App.4th at 1317-18; CEQA Guidelines § 15064(f)(5).

<sup>18</sup> *Id.*, 124 Cal.App.4th at 928; *Sierra Club*, 6 Cal.App.4th at 1317-18.

<sup>19</sup> *Id.*, 124 Cal.App.4th at 935.

<sup>20</sup> *Id.* at 935.

<sup>21</sup> *Sundstrom*, 202 Cal.App.3d at 310 (citation omitted).

<sup>22</sup> 14 CCR § 15063(b)(1) (emphasis added).

<sup>23</sup> See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

narrow, thus minimizing the project's impacts and undercutting public review.<sup>24</sup> The MND does not meet CEQA's requirements because it fails to include a complete and accurate description of key elements of the Project's construction phase. These omissions render the MND's impacts analysis inherently unreliable.

**A. The MND Fails to Describe the Project's Haul Route and Analyze Its Impacts.**

The MND contains an inadequate and unclear description of the Project's proposed construction haul route. The Project will require almost 4,000 haul truck trips during its 18.5 month construction period.<sup>25</sup> These trucks may cause significant traffic delays in surrounding neighborhoods and on already impacted Los Angeles thoroughfares, and may result in significant emissions of diesel particulate matter ("DPM"). The MND explains that a haul route permit is likely be required as one of the Project's discretionary entitlements.<sup>26</sup> It is therefore a critical omission not to clearly define the construction haul route, because it precludes the MND from adequately analyzing the potentially significant impacts from Project construction.

The MND describes major streets that haul truck traffic may follow, but does not clearly describe any haul route. Instead, the MND states that the haul route will be subsequently identified and approved by the Department of Building and Safety.<sup>27</sup> The MND then concludes, with no supporting evidence, that impacts from haul truck traffic will be less than significant.<sup>28</sup> This conclusion is unsupported and lacks merit, particularly since the MND acknowledges that the haul route will utilize streets that are already impacted at LOS F levels with existing local traffic, such as Hollywood Boulevard and Cahuenga Boulevard.<sup>29</sup>

The MND similarly fails to describe the impacts from haul truck trips. The MND concludes that Project construction traffic will have less than significant impacts because the Project's construction trip traffic "would be a fraction of the

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<sup>24</sup> See *id.*

<sup>25</sup> Exhibit A, p. 4.

<sup>26</sup> MND, p. 1.

<sup>27</sup> MND, p. III-166.

<sup>28</sup> *Id.*

<sup>29</sup> See MND, p. III-160, Table III-32 (Existing with Project Conditions – Year 2017) Significant Impact Analysis.



operational traffic the operational traffic that would not cause any significant impacts at the studied intersections.”<sup>30</sup> However, the Traffic Study explains that the Project’s construction phase would require up to 50 large haul trucks per day.<sup>31</sup>

The MND next concludes that “it is not anticipated that this would contribute to a significant increase in the overall congestion in the Project vicinity” by equating the impact from the haul trucks with the impact cause by passenger autos.<sup>32</sup> By so doing, the MND fails to analyze the different nature of impacts cause by significantly larger, slower moving haul trucks as compared to passenger vehicles.

The Project will require the excavation of 27,500 cubic yards of soil.<sup>33</sup> The MND estimates that excavation and soil export would involve the use of 18-wheel bottom-dump trucks.<sup>34</sup> SWAPE estimates that the construction phase will require 3,930 hauling trips by these large trucks.<sup>35</sup> The MND’s Traffic Study acknowledges that “the impact of construction traffic (including haul trucks) would be a lessening of the capacities of access streets and haul routes due to slower movements and larger turning radii of trucks.”<sup>36</sup> However, the MND fails to describe the impacts associated with this traffic disruption. It is reasonable to conclude that haul truck traffic will cause a different type of traffic impact than operational passenger car trips to and from the hotel. It is therefore imperative that the City clearly describe the construction haul route, so that the City can accurately disclose, analyze, and mitigate, the Project’s potentially significant and unique impacts resulting from the Project’s haul route traffic. An EIR must be prepared to describe and analyze this critical Project feature.

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<sup>30</sup> MND, p. III-166.

<sup>31</sup> MND, Appen. G, p. 74: “Based on projections compiled for the Project, approximately 27,500 cubic yards (CY) of material would be excavated and removed from the Project Site over an 80-workday period. That equates to approximately 344 CY of material exported each workday, requiring 25 haul trucks per work day based on an anticipated haul truck capacity of 14 CY each. Thus, up to 50 daily haul truck trips (25 inbound, 25 outbound) are forecast to occur during the excavation and grading period, with approximately eight trips per hour (four inbound, four outbound) uniformly over a typical six-hour workday.”

<sup>32</sup> MND, p. III-166.

<sup>33</sup> MND, p. III-166.

<sup>34</sup> MND, p. II-43.

<sup>35</sup> Exhibit A, p. 3.

<sup>36</sup> Appen. G, p. 74.



#### **IV. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS THAT REQUIRE THE CITY TO PREPARE AN ENVIRONMENTAL IMPACT REPORT**

Under CEQA, a lead agency must 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>37</sup> The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration or notices of exemption from CEQA.<sup>38</sup> An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.<sup>39</sup> Substantial evidence can be provided by technical experts or members of the public.<sup>40</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>41</sup>

As discussed below, there is a fair argument, supported by substantial evidence, that the Project may result in significant impacts on air quality, public health, and GHG emissions. 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.

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<sup>37</sup> Pub. Resources Code § 21082.2; CEQA Guidelines § 15064(f), (h); *Laurel Heights Improvement Ass’n v. Regents of the University of California* (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 Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

<sup>38</sup> *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

<sup>39</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”].

<sup>40</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>41</sup> CEQA Guidelines § 15062(f).



**A. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant, Unmitigated Air Quality Impacts.**

Under CEQA a project has significant impacts if it “[v]iolate[s] any air quality standard or contribute[s] substantially to an existing or projected air quality violation.”<sup>42</sup> The South Coast Air Quality Management District (“SCAQMD” or “Air District”) maintains thresholds of significance for criteria air pollutants that are to be used in determining the significance of a project’s air quality impacts under CEQA.<sup>43</sup> The MND acknowledges that “a project may have a significant impact where project-related emissions would exceed federal, State, or regional standards or thresholds, or where project-related emissions would substantially contribute to an existing or projected air quality violation.”<sup>44</sup> However, the MND concludes that “construction-related daily emissions associated with the Proposed Project would not exceed any regional SCAQMD significance thresholds for six criteria pollutants during the construction phases.”<sup>45</sup>

As discussed below, the MND’s air quality analysis contains numerous errors and omissions which render it inaccurate and unsupported. As a result, the MND’s conclusion that the Project’s construction air quality impacts are less than significant is incorrect and not supported by substantial evidence. CREED LA’s air quality experts at SWAPE performed an independent analysis of the Project’s construction emissions based on data included in the MND. Based on this analysis, SWAPE concludes that the Project will have significant, unmitigated criteria pollutant and toxic air emissions. SWAPE’s findings constitute substantial evidence supporting a fair argument that the Project will have significant, unmitigated construction air quality impacts, and public health impacts, that the MND fails to disclose and mitigate.

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<sup>42</sup> CEQA Appendix G.

<sup>43</sup> See SCAQMD Thresholds, available at <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>.

<sup>44</sup> MND, p. III-6.

<sup>45</sup> MND, p. III-9.

**1. The MND's Analysis of Construction Emissions is Inadequate and Unsupported.**

The MND's air quality analysis relies on several incorrect and unsupported input parameters to conclude that the Project's construction emissions will be less than significant. As a result, the Project's construction emissions and associated impacts are underestimated and the MND's conclusions are unsupported.

**a. Improper Reliance on Mitigation to Calculate Emissions.**

The MND incorrectly applies dust control mitigation to the Project's initial CalEEMod calculations of unmitigated construction emissions to conclude that construction emissions are less than significant. This approach violates CEQA's requirement that the lead agency must first determine the extent of a project's impacts before it may apply mitigation measures to reduce those impacts.<sup>46</sup>

As SWAPE explains, the MND's CalEEMod emissions analysis applied dust control mitigation to the Project's initial quantification of unmitigated construction emissions by adjusting the CalEEMod default values downward to account for limiting the Project's construction vehicle speed on unpaved roads to zero (0) miles/hour, as follows:

Table Name	Column Name	Default Value	New Value
tblConstDustMitigation	WaterUnpavedRoadVehicleSpeed	40	0

<sup>47</sup>

This mitigation appears to be derived from SCAQMD Rule 403, which requires construction projects to implement mitigation measures at a project site to control fugitive dust and excess exhaust emissions. Among other measures, Rule 403 requires construction projects to "operate construction equipment so as to minimize exhaust emissions," and to turn off trucks that are not actively engaged in hauling activity.<sup>48</sup> The MND explains that compliance with Rule 403 is required for the Project, and that its CalEEMod emissions calculations "assume that appropriate

<sup>46</sup> 14 CCR § 15370; *Lotus v. Dep't of Transp.* (2014) 223 Cal.App.4th 645, 651-52.

<sup>47</sup> See Exhibit A, p. 3; MND, Appendix A, pp. 4, pp. 37.

<sup>48</sup> See SCAQMD Rule 403; MND, p. III-7.



dust control measures would be implemented...during each phase of development, as required and regulated by SCAQMD.”<sup>49</sup>

The application of mitigation to the initial disclosure of a Project’s unmitigated impacts violates CEQA.<sup>50</sup> The CEQA Guidelines define “measures which are proposed by project proponents to be included in the project” as “mitigation measures” within the meaning of CEQA.<sup>51</sup> This includes actions which “[m]inimiz[e] impacts by limiting the degree or magnitude of the action and its implementation,” such as limiting vehicle speeds at a construction site.<sup>52</sup> *Lotus v. Department of Transportation*<sup>53</sup> clarified the requirements of CEQA Guideline 15370. In *Lotus*, the court held that “avoidance, minimization and/or mitigation measures,” are not “part of the project.”<sup>54</sup> Rather, they are mitigation measures designed to reduce or eliminate environmental impacts of the Project, and must be treated as such.

Mitigation measures cannot be incorporated in a CEQA document’s initial calculation of a project’s unmitigated impacts because the analysis of unmitigated impacts, by definition, must accurately assess such impacts before any mitigation measures to reduce those impacts are applied.<sup>55</sup> By incorporating emissions reductions related to dust control into its initial construction emissions analysis, the MND incorrectly compresses its analysis of impacts and mitigation measures into a single issue. The MND’s approach also violates SCAQMD guidelines for evaluating construction emissions, which require CalEEMod calculations for off-road exhaust and fugitive dust to be based on the number of equipment hours and the maximum daily soil disturbance activity possible for each piece of equipment prior to incorporating any mitigation.<sup>56</sup>

Moreover, the MND’s assumption that there will be *no* construction vehicles driving on unpaved roads on the Project site is unsupported by the facts in the

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<sup>49</sup> MND, p. III-9.

<sup>50</sup> 14 CCR § 15370; *Lotus v. Dep’t of Transp.* (2014) 223 Cal.App.4th 645, 651-52.

<sup>51</sup> 14 CCR 15126.4(a)(1)(A).

<sup>52</sup> 14 CCR § 15370(b).

<sup>53</sup> *Lotus v. Dept. of Transportation* (2013) 223 Cal.App.4th 650.

<sup>54</sup> *Id.* at 656.

<sup>55</sup> *Id.* at 651 - 52.

<sup>56</sup> See SCAQMD Fact Sheet for Applying CalEEMod to Localized Significance Thresholds, available at <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/caleemod-guidance.pdf>.

record. The MND explains that the Project's construction phase will require the removal of 18,360 square feet ("sf") of debris resulting from the demolition of an existing parking lot and garage on the Project site, and the removal of 27,500 cubic yards of soil throughout the Project's grading phase.<sup>57</sup> The MND further explains that this debris removal will require the use of almost 2000 haul trucks, and includes calculations for trips made by those trucks. Although, as discussed below, the MND undercalculates the number of haul trucks required, there is no dispute that some number of the haul truck trips will be required during Project construction, and that those haul trucks will necessarily operate at greater than zero miles-per-hour. Thus, as SWAPE explains, it is entirely unsupported for the MND to model construction emissions assuming there will be no vehicles driving on unpaved roads, as it is clear from the MND's Project description that a significant number of vehicles will be driving throughout the Project site during construction to remove soil and debris. The MND therefore relies on an unreasonable (and factually impossible) vehicle operation scenario to conclude that the Project's construction emissions will be less than significant.

***b. Undercounting Haul Truck Trips.***

The MND significantly underestimates the number of haul truck trips that would be required during the grading phase of Project construction. As SWAPE explains, the Project's grading phase is expected to generate a total of 27,500 cubic yards of soil export during Project construction.<sup>58</sup> The MND estimates that the Project would require a total of 1,965 haul truck trips during the grading phase of construction, using haul trucks equipped to export 14 cubic yards of material per load.<sup>59</sup> This estimate, however, is incorrect, because it fails to account for the requisite 2 one-way trips that are required for *each* haul truck. 1,965 is the number of truck *loads* required to haul 27,500 cubic yards of soil using 14 cubic yard-capacity trucks, but this number does not equate to the number of truck *trips* required to haul this material.

As SWAPE explains, a haul truck importing material will have a loaded arrival trip and an empty return trip, whereas a hauling truck exporting material will have an empty arrival trip but a loaded departure trip.<sup>60</sup> Thus, SWAPE

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<sup>57</sup> See MND, Appendix A, pp. 3, pp. 36, p. II-42.

<sup>58</sup> MND, p. II-42.

<sup>59</sup> MND, Appendix A, pp. 6, 39.

<sup>60</sup> MND, p. 4.



explains that two trips must be counted per truck (trip in and trip out). The MND should therefore have modeled the Project's emissions assuming that there would be a total of 3,930 hauling trips (2 x 1,965) during the grading phase of construction, not simply 1,965 trips, as used in the MND. This significant error in the MND's air quality analysis renders its conclusions unsupported.

*c. Unsubstantiated Reliance on Tier 3 Emissions Reductions.*

The MND modeled construction emissions assuming that Tier 3 equipment would be used during construction.<sup>61</sup> However, the use of Tier 3 equipment is not discussed or mentioned anywhere in the MND, and is not imposed as binding mitigation for the Project.<sup>62</sup> The MND therefore lacks any substantial evidence to support its conclusion that Tier 3 mitigation should be incorporated into its emissions analysis. As a result, the MND's air quality analysis contains substantial, unsupported emissions reductions that render it inaccurate.

The MND also fails to include any assessment of the feasibility of obtaining exclusively Tier 3 equipment during Project construction. As SWAPE explains, although Tier 3 engines are currently being produced and installed in new off-road construction equipment, the vast majority of existing diesel off-road construction equipment in California is not currently equipped with Tier 3 engines.<sup>63</sup> A recent 2014 study demonstrates that 25% of all off-road equipment in the state of California were equipped with Tier 2 engines, approximately 12% were equipped with Tier 3 engines, approximately 18% were equipped with Tier 4 Interim engines, and only 4% were equipped with Tier 4 Final engines.<sup>64</sup> Thus, Tier 3 equipment accounts for only 12% of all off-road equipment currently available in the state of California.

The MND's air quality analysis inexplicably assumes that the Project will use 100% Tier 3 construction equipment for the entire 18.5 month duration of Project construction. The MND lacks any evidence demonstrating that the Applicant has the ability to procure the Tier 3 equipment necessary to facilitate this construction. The MND's reliance on Tier 3 emissions reductions is therefore unsupported and inaccurate.

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<sup>61</sup> See MND, Appendix A, p. 3.

<sup>62</sup> See Exhibit A, p. 4; MND, pp. III-5 to III-17.

<sup>63</sup> Exhibit A, p. 5.

<sup>64</sup> Exhibit A, p. 6.

**d. Improperly Discounting Operational Vehicle Trips.**

The MND incorrectly “double counted” the number of pass-by trips expected to occur during Project operation, resulting in underestimated operational emissions. As SWAPE explains, CalEEMod separates operational trip purposes into three categories for purposes of modeling emissions: primary, diverted, and pass-by trips.<sup>65</sup> Pass-by trips are assumed to be 0.1 miles in length and are not counted for emissions purposes because they result in no diversion from the driver’s primary route.<sup>66</sup>

The MND’s air quality analysis divided trip purposes among primary, diverted, and pass-by trip types for the Project’s proposed restaurant land use.<sup>67</sup> However, pass-by trips for the restaurant land uses had already been accounted for in the Traffic Impact Study (“TIS’s”) Trip Generation calculations, which estimated 1,738 pass-by trips.<sup>68</sup> The MND counted another 1,738 as “pass-by” trips for purposes of modeling operational air emissions, resulting in operational emissions that were “discounted” by an additional 1,738 trips. SWAPE concludes that this double counting resulted in an artificially low and inaccurate emissions assessment.

**2. There is Substantial Evidence Supporting a Fair Argument That the Project Will Have Potentially Significant, Unmitigated ROG Emissions.**

SWAPE performed an independent CalEEMod analysis of the Project’s construction and operational emissions that includes accurate site-specific information disclosed in the MND and corrected input parameters to remove improperly applied mitigation measures. Specifically, the SWAPE model corrected the number of grading hauling trips to account for haul trucks coming on and off the Project site. Additionally, SWAPE did not include any mitigation to reduce the vehicle speed on unpaved roads, or the use of Tier 3 off-road construction equipment. Finally, SWAPE corrected the pass-by trip rates to zero in the restaurant land use and added those trips to the primary trip category, as well as

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<sup>65</sup> Exhibit A, p. 6.

<sup>66</sup> *Id.*; citing CalEEMod User’s Guide, Appendix A: Calculation Details for CalEEMod, p. 20.

<sup>67</sup> MND, Appendix G, pp. 30, pp. 60.

<sup>68</sup> *Id.*; Exhibit A, p. 7.



adjusted the restaurant trip rate in order to account for the additional 139 trips per day that were not included in the TIS.<sup>69</sup>

SWAPE found that, when the Project's emissions are modeled accurately, the Project's construction-related ROG emissions exceed the 75-pounds per day (lbs/day) threshold set forth by the SCAQMD, as follows:<sup>70</sup>

Maximum Daily Construction Emissions (lbs/day)	
Model	ROG
IS/MND	11.79
SWAPE	78.74
Percent Difference	568%
SCAQMD Threshold (lbs/day)	75
Exceed?	Yes

SWAPE's analysis demonstrates that construction-related ROG emissions would increase by 568%, thus exceeding SCAQMD significance thresholds. SWAPE's findings constitute substantial evidence supporting a fair argument that the Project will have significant, unmitigated construction ROG emissions that the MND fails to disclose and mitigate.

The City must prepare an EIR which discloses these impacts as significant, and which requires mitigation measures to reduce these emissions to less than significant levels.

**3. There is Substantial Evidence Supporting a Fair Argument That the Project Will Have Potentially Significant, Unmitigated Impacts From Diesel Particulate Matter Emissions.**

The City's analysis of the Project's health risks from diesel particulate matter ("DPM") emissions is inadequate. The MND acknowledges that the Project's construction activities "would generate toxic air contaminants in the form of diesel particulate emissions associated with the use of heavy trucks and construction equipment."<sup>71</sup> However, the MND concludes that the Project would result in a less

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<sup>69</sup> Exhibit A, p. 9.

<sup>70</sup> Exhibit A, p. 9.

<sup>71</sup> MND, p. III-15.

than significant impact from construction and operational toxic air contaminant (“TAC”) emissions without conducting a health risk assessment (“HRA”) for the Project. The MND incorrectly argues that an HRA is unnecessary for construction TACs because construction emissions are short-term.<sup>72</sup> For operational emissions, the MND incorrectly argues that an HRA is unnecessary because the Project does not involve significant toxic airborne emissions.<sup>73</sup> SWAPE explains why the MND is unsupported.

First, an HRA must be conducted for construction emissions despite the short-term duration. The South Coast Air Quality Management District (“SCAQMD”) recommends that health risk impacts of short-term projects be evaluated. The SCAQMD guidance documents states that “these short-term cancer risk assessments can be thought of as being the equivalent to a 30-year cancer risk estimate and the appropriate thresholds would still apply...”<sup>74</sup> The SCAQMD’s significance threshold for determining a project’s health risk impact is 10 in one million.<sup>75</sup> Project construction would occur over an 18.5 month period, and would generate a significant amount of diesel particulate matter (“DPM”) emissions from construction equipment and vehicle trips. Thus, pursuant to SCAQMD guidance, the City must prepare an HRA for the Project’s construction emissions and compare the results to applicable 10 in one million cancer risk threshold.

Second, HRAs are not only for industrial projects that involve toxic emissions. To the contrary, SCAQMD requires HRAs for analyzing cancer risks for projects that involve vehicular trips.<sup>76</sup> Thus, the City must prepare an HRA for the Project’s operational emissions to address health risks resulting from long-term operational exposure to toxic emissions.

Third, the City’s failure to prepare an HRA for the Project is inconsistent with the Office of Environmental Health Hazard Assessment (“OEHHA”) guidance. OEHHA, the organization responsible for providing recommendations and guidance on how to conduct HRAs, recommends that all short-term projects lasting more

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<sup>72</sup> MND, p. III-13.

<sup>73</sup> *Id.*

<sup>74</sup> See Exhibit A, p. 10.

<sup>75</sup> See SCAQMD Air Quality Significance Thresholds, FN 17 to Exhibit A, available at <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>.

<sup>76</sup> Exhibit A, p. 11.



than 6 months be evaluated for cancer risks to nearby sensitive receptors.<sup>77</sup> Here, Project construction will last 18.5 months, and Project operation is estimated to last up to 30 years.<sup>78</sup> Therefore, pursuant to OEHHA guidance, the City should conduct an HRA for both Project construction (DPM from the exhaust stacks of construction equipment) and operation (truck trips).

SWAPE conducted a screening-level HRA for Project construction and operation. SWAPE's analysis is detailed in its attached comments.<sup>79</sup> As explained in the MND, there are numerous sensitive receptors located in close proximity to the Project site. The closest residential receptor is adjacent to the Project site, located just 1 meter away.<sup>80</sup> SWAPE found that the Project's excess cancer risks to adults (28 in one million), children (190 in one million) and infants (310 in one million) for the maximum exposed individual at an existing residential receptor ("MEIR") located 1 meter away, all exceed the SCAQMD's significance threshold of 10 in one million. In addition, SWAPE found that the excess cancer risk over the course of the residential lifetime (30 years) at the MEIR is 530 in one million.<sup>81</sup> These health risks substantially exceed the SCAQMD significance threshold for cancer of 10 in one million, and are therefore significant impacts requiring mitigation.<sup>82</sup>

SWAPE's conclusions constitute substantial evidence supporting a fair argument that the Project is likely to result in potentially significant health risks from Project construction and operational TACs. Thus, the City must prepare an EIR for the Project.

SWAPE recommends several mitigation measures, which are detailed in its comment letter, to reduce the Project's potentially significant public health risk impacts. For example:

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<sup>77</sup> *Id.*

<sup>78</sup> MND, p. III-15; Exhibit A, p. 11.

<sup>79</sup> Exhibit A, p. 12.

<sup>80</sup> MND, Figure III-1, pp. 111. There are also two schools, Selma Elementary and Larchmont School, located just 260 feet from the Project site. See MND, p. III-100.

<sup>81</sup> Exhibit A, p. 14

<sup>82</sup> MND, p. III-6; *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 (EIR must disclose an impact as significant when it exceeds a duly adopted CEQA significance threshold).

- Require implementation of diesel control measures for construction equipment, diesel vehicles and generators;
- Repower or replace older construction equipment engines;
- Install retrofit devices on existing construction equipment;
- Use electric and hybrid construction equipment;
- Institute a heavy-duty off-road vehicle plan;
- Reduce vehicle miles traveled by increasing transit accessibility;
- Provide electric vehicle charging stations/parking;
- Implement an employee parking “cash-out” program;
- Implement transit access improvements; and
- Expand the transit network.<sup>83</sup>

Thus, the EIR must also include mitigation measures to reduce the Project’s health risk impacts to a less than significant level.

**B. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant, Unmitigated Greenhouse Gas Impacts.**

The MND incorrectly concludes that the Project’s GHG impact would be less than significant,<sup>84</sup> and fails to provide substantial evidence to support its claim. The MND underestimated and inadequately disclosed the Project’s GHG emissions. When accurately quantified, substantial evidence demonstrates that the Project’s GHG emissions exceed applicable significance thresholds, resulting in significant, unmitigated impacts. As a result, there is substantial evidence supporting a fair argument that the Project’s GHG impacts will be significant. These deficiencies in the MND’s GHG analysis must be corrected in an EIR.

**1. The MND Fails to Evaluate GHG Emissions in Accordance With CEQA’s Regulatory Requirements.**

The MND relies on Section 15064.4(b)(3) of the CEQA Guidelines to determine the significance of the Project’s GHG impact. Section 15064.4(b)(3) allows agencies conducting CEQA review to assess the significance of a project’s GHG emissions based on the project’s compliance with regulations or requirements

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<sup>83</sup> See Exhibit A, p. 15.

<sup>84</sup> MND, p. III-51.



that have been adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.<sup>85</sup> In order to rely on Section 15064.4(b)(3), the regulatory requirements on which the lead agency seeks to rely on must meet two criteria: (i) the requirements must be adopted by the relevant public agency through a public review process, and (ii) the requirements must actually reduce or mitigate the project's incremental contribution of greenhouse gas emissions.<sup>86</sup>

In addition to evaluating a project's compliance with GHG-reduction regulations or requirements, Section 15064.4(b) also recommends that agencies consider two additional factors: (1) the extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting; and (2) whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.<sup>87</sup> The MND fails to comply with CEQA Section 15064.4(b) because the MND fails to ensure compliance with applicable GHG-reduction plans, fails to compare the Project's GHG emissions to SCAQMD's adopted thresholds of significance for GHGs, and fails to accurately quantify the Project's GHG emissions.

*a. Compliance with GHG-Reduction Plans.*

The MND relies on the Project's purported compliance with GHG reduction measures set forth in CARB's Climate Change Scoping Plan, SB 375, SCAG's 2016-2040 RTP/CSC, and the L.A. Green Building Code to conclude that the Project's GHG emissions would result in a less than significant impact.<sup>88</sup> However, the MND fails to include a detailed discussion of which of those plan's requirements will result in reductions of the Project's GHG emissions, and how. Rather, as explained by SWAPE, the MND fails to provide substantial evidence to support its conclusion that compliance with these plans will reduce the Project's GHG emissions to less than significant levels because the MND fails to incorporate the majority of the measures recommended in these guidance documents for the Project.<sup>89</sup>

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<sup>85</sup> 14 CCR sec. 15064.4(b)(3).

<sup>86</sup> MND, p. III-44; 14 CCR sec. 15064.4(b)(3).

<sup>87</sup> 14 CCR sec. 15064.4(b)(1) and (2).

<sup>88</sup> MND, p. III-51.

<sup>89</sup> See Exhibit A, p. 16.

b. *The MND Fails to Apply Applicable SCAQMD GHG Significance Thresholds.*

The MND ignores GHG significance thresholds adopted by SCAQMD by incorrectly stating that “SCAQMD has yet to formally adopt a GHG significance threshold for land use development projects.”<sup>90</sup>

In December 2008, the SCAQMD released its *Interim CEQA GHG Significance Threshold for Stationary Sources, Rules, and Plans* report (“Interim Guidance”).<sup>91</sup> The Interim Guidance was adopted by the SCAQMD Board in 2008. Pursuant to the Interim Guidance, SCAQMD proposes the use of a 3,000 metric tons of carbon dioxide equivalents per year (MT CO<sub>2</sub>e/yr) threshold for mixed use developments, a 3,500 MT CO<sub>2</sub>e/yr threshold for residential developments, and a 1,400 MT CO<sub>2</sub>e/yr threshold for commercial developments.<sup>92</sup> As an alternative to these thresholds for residential, commercial, and mixed-use developments, SCAQMD also recommends the use of a single numerical threshold of 3,000 MT CO<sub>2</sub>e/yr for all non-industrial projects.<sup>93</sup> Although these thresholds have not been formally adopted by the City of Los Angeles, they have been adopted by SCAQMD, the air district with regulatory authority over the Project and the LA air basin, and are intended by SCAQMD to be used in analyzing the significance of GHG emissions for proposed projects until updated thresholds are proposed.<sup>94</sup>

The SCAQMD GHG thresholds are designed for application at the project level and thus provide a relevant method for determining the significance of the

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<sup>90</sup> MND, p. III-44.

<sup>91</sup> SCAQMD Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans, FN 28 to Exhibit A, available at [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2)

<sup>92</sup> *Id.*, p. 8.

<sup>93</sup> Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans, FN 29 to Exhibit A <http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-%28ghg%29-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf?sfvrsn=2>

<sup>94</sup> Air districts act in an advisory capacity to local governments in establishing the framework for environmental review of air pollution impacts under CEQA, which include recommendations regarding significance thresholds, analytical tools to estimate emissions and assess impacts, and mitigations for potentially significant impacts.; see December 5, 2008, SCAQMD Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans, FN 28 to Exhibit A, available at [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2).



Project's GHG emissions. Moreover, SCAQMD's GHG significance thresholds are intended for use within SCAQMD's jurisdiction, where the Project is located. Pursuant to the requirements of CEQA Guidelines Section 15064.4, the SCAQMD GHG thresholds have also undergone a public review process as part of stakeholder working group meetings that are open to the public. The SCAQMD GHG significance thresholds therefore provide substantial evidence within the meaning of Section 15064 that the SCAQMD GHG thresholds are consistent with requirements set forth by CEQA.<sup>95</sup> An EIR should be prepared to analyze the Project's GHG emissions pursuant to the SCAQMD thresholds.

*c. Inaccurate Analysis of GHG Emissions.*

The MND substantially underestimates the Project's actual GHG emissions due to its inaccurate emissions modeling. As discussed above, the MND's air quality modeling contained numerous errors and omissions which resulted in an underestimated analysis of the Project's construction and operational emissions. The MND relies on the same erroneous emissions factors in its GHG analysis, concluding that the Project would result in total GHG emissions of just 2,606.8 MT CO<sub>2</sub>e/year.<sup>96</sup> The MND then applies an additional GHG "credit" to the Project, based on application of various energy efficiency measures to the Project, to conclude that the Project's mitigated GHG emissions will be reduced by 36%, resulting in total net GHG emissions of 1,676.44 MT CO<sub>2</sub>e/year.<sup>97</sup> As discussed above, these numeric conclusions are based on a flawed analysis, and are therefore unsupported. SWAPE performed an independent GHG analysis using corrected emissions factors, and concludes that the Project's GHG emissions are significant.

*i. The Project Will Result in Significant, Unmitigated GHG Emissions.*

SWAPE conducted an independent GHG analysis using the GHG emission estimates from SWAPE's CalEEMod model, and the SCAQMD's Interim Guidance.<sup>98</sup> When the Project's GHG emissions are compared to the 3,000 MT CO<sub>2</sub>e/yr screening threshold recommended by the SCAQMD for mixed-use projects,

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<sup>95</sup> *Id.*

<sup>96</sup> MND, p. III-47.

<sup>97</sup> *Id.*

<sup>98</sup> Exhibit A, p. 17.

SWAPE found that the Project's emissions would exceed the SCAQMD screening threshold (see table below).<sup>99</sup>

Annual Greenhouse Gas Emissions	
Emission Source	Proposed Project (MT CO <sub>2</sub> e/Yr)
Construction (Amortized)	17
Area	3
Energy	823
Mobile	2,063
Waste	60
Water	72
<b>Project Total</b>	<b>3,038</b>
<b>Screening Threshold (MT CO<sub>2</sub>E/Yr)</b>	<b>3,000</b>
<b>Exceed?</b>	<b>Yes</b>

SWAPE concludes the Project would emit approximately 3,038 MT CO<sub>2</sub>e/year of GHG emissions. This exceeds the SCAQMD's recommended threshold of 3,000 MT CO<sub>2</sub>e/yr, and is therefore a significant impact requiring mitigation.

## V. THE MND'S ANALYSIS OF CUMULATIVE AIR QUALITY AND GHG IMPACTS IS INADEQUATE

The MND incorrectly concludes that the Project's cumulative impacts on air quality and GHGs are insignificant based on its erroneous conclusions that the Project's individual air quality and GHG impacts are less than significant. The MND also incorrectly opines that, because the Project's impacts "in isolation" are "relatively very small" in comparison to State and local emissions, the Project's air quality and GHG impacts are cumulatively insignificant. The MND's approach to cumulative impacts is both factually and legally incorrect, and results in a failure to disclose and mitigate the Project's potentially significant cumulative air quality and GHG impacts.

A lead agency must find that a project may have a significant effect on the environment and must therefore require an EIR if the project's potential

<sup>99</sup> *Id.*



environmental impacts, although individually limited, are cumulatively considerable.<sup>100</sup> The term “cumulatively considerable” means that “the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”<sup>101</sup> An EIR is required when an initial study fails to adequately explain why cumulative effects would not occur.<sup>102</sup> Finally, CEQA Guidelines Section 15064.4 requires that, “[i]f there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with adopted regulations or requirements, an EIR must be prepared for the project.”<sup>103</sup>

SCAQMD’s cumulative impact guidance similarly requires that a CEQA document must discuss “cumulative impacts of a project when the project’s incremental effect is cumulatively considerable.”<sup>104</sup> Although the SCAQMD guidance provides that “projects that do not exceed the project-specific thresholds are generally not considered to be cumulatively significant,” the guidance explains that “projects that exceed the project-specific significance thresholds *are* considered by the SCAQMD to be cumulatively considerable.”<sup>105</sup>

With regard to air quality impacts, the MND explains that “[d]evelopment of the Proposed Project in conjunction with the related projects in the Project Site vicinity would result in an increase in construction and operational emissions in the already urbanized area of the City of Los Angeles.”<sup>106</sup> The MND nevertheless concludes that the Project’s cumulative impacts from both construction and operational emissions will be insignificant based on the MND’s CalEEMod modeling results.<sup>107</sup> As discussed above, SWAPE found that the MND’s emissions modeling

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<sup>100</sup> PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

<sup>101</sup> PRC § 21083(b)(2).

<sup>102</sup> See *San Bernardino Valley Audubon Soc’y v. Metropolitan Water Dist.* (1999) 71 Cal. App. 4th 382.

<sup>103</sup> 14 CCR § 15064.4(b)(3).

<sup>104</sup> See SCAQMD Air Quality Analysis Handbook, White Paper on Potential Control Strategies to Address Cumulative Impacts From Air Pollution, Appendix D, Cumulative Impact Analysis Requirements Pursuant to CEQA, p. D-1, available at <http://www.aqmd.gov/docs/default-source/Agendas/Environmental-Justice/cumulative-impacts-working-group/cumulative-impacts-white-paper-appendix.pdf?sfvrsn=4>.

<sup>105</sup> *Id.* (emphasis added).

<sup>106</sup> MND, p. III-16.

<sup>107</sup> MND, p. III-16 to -17.

contains numerous errors which resulted in underestimated emissions. Moreover, SWAPE's independent emissions modeling concluded that the Project's individual emissions exceed SCAQMD localized and regional significance thresholds for ROG's. Therefore, the MND's conclusion that the Project's cumulative air quality impacts are less than significant is unsupported. And there is substantial evidence supporting a fair argument that the Project will have significant cumulative ROG emissions that the MND fails to disclose and mitigate

With regard to GHG emissions, the MND similarly concludes that Project would not result in a cumulatively considerable contribution to GHG emissions, and that GHG impacts would therefore be less than significant, because the Project "would be consistent with all applicable local ordinances, regulations and policies that have been adopted in furtherance of the state and City's goals of reducing GHG emissions."<sup>108</sup> However, as discussed above, the MND fails to mandate adherence to all applicable GHG-reduction plans, and will in any case result in GHG emissions that exceed the SCAQMD GHG significance threshold of 3000 MT CO<sub>2</sub>e/year for mixed-use projects.<sup>109</sup> Since the Project's individual GHG impacts are significant, the MND should have disclosed a significant cumulative GHG impact. Pursuant to Section 15064.4(b)(3), an EIR is required to further analyze and require mitigation for these significant cumulative impacts.

Finally, the MND's significant conclusions for both cumulative air quality and cumulative GHG emissions are based on the erroneous premise that, because the Project's individual contribution to cumulative impacts is small in comparison to global air quality impacts, the Project's cumulative impacts are therefore insignificant. The result is a complete dismissal of the Project's cumulative air quality impacts by claiming that they are a "drop in a bucket" compared with other existing regional impacts. This approach has been rejected by the Courts, and fails to comply with CEQA's requirement that a project mitigate impacts that are "cumulatively considerable."<sup>110</sup>

In *Friends of Oroville*, the City of Oroville prepared an EIR for a retail center project. The EIR failed to analyze the project's cumulative contribution to significant GHG impacts by concluding, without analysis, that the project's

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<sup>108</sup> MND, p. III-51.

<sup>109</sup> Exhibit A, p. 16.

<sup>110</sup> PRC § 21083(b)(2); 14 CCR § 15130; *Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 721.



“miniscule” GHG emissions were insignificant in light of the state’s cumulative, state-wide GHG emissions problem. The EIR had concluded that a further analysis of the project’s GHG impacts would result in “applying a meaningless, relative number to determine an insignificant impact.”<sup>111</sup> The court of appeal rejected what amounted to an outright dismissal of the City’s obligation to analyze the retail center’s cumulative GHG impacts.<sup>112</sup>

Similarly, in *Kings County Farm Bureau v. City of Hanford*,<sup>113</sup> the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for PM10 and ozone, the City failed to incorporate mitigations for the project’s cumulative air quality impacts from project emissions because it concluded that the Project would contribute “less than one percent of area emissions for all criteria pollutants.”<sup>114</sup> The city reasoned that, because the project’s air emissions were small in comparison to existing air quality problems, this necessarily rendered the project’s “incremental contribution” minimal under CEQA. The court rejected this approach, finding it “contrary to the intent of CEQA.”

Under CEQA, a lead agency must find that a project may have a significant effect on the environment and must therefore require an EIR if the project’s potential environmental impacts, although individually limited, are cumulatively considerable.<sup>115</sup> The City therefore cannot end its cumulative impacts analysis with a simple conclusion that, because a project’s contribution to global air pollution is a fraction of the global problem, that it is therefore insignificant. That is not the intent of CEQA’s cumulative impacts analysis. Rather, the City must attempt to determine whether the Project’s emissions, when combined with other similar emissions from other projects, may be significant. Under CEQA, if an adjacent project has significant air emissions, but the proposed project does not, the proposed project may still be considered to have significant cumulative impacts if its own emissions contribute to a cumulative exceedance of a particular pollutant.<sup>116</sup> The same is true for projects which may have individually insignificant impacts, but

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<sup>111</sup> 219 Cal. App. 4th at 841-42.

<sup>112</sup> *Id.*

<sup>113</sup> (1990) 221 Cal. App. 3d 692, 721.

<sup>114</sup> *Id.* at 719.

<sup>115</sup> PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

<sup>116</sup> PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3), 15130(a).

which, when combined, result in a significant impact.<sup>117</sup> The MND fails to undertake that analysis at all.

An EIR must be prepared to adequately disclose and mitigate the Project's significant air quality and GHG impacts.

## VI. CONCLUSION

The CEQA Guidelines require that an EIR be prepared if there is substantial evidence that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment.<sup>118</sup> As discussed in detail above, there is substantial evidence that the Project would result in significant adverse impacts that were not identified in the MND, and that are not adequately analyzed or mitigated. The MND therefore fails to contain the basic information and analysis required by CEQA, deficiencies which "cannot be dismissed as harmless or insignificant defects."<sup>119</sup>

We urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing a legally adequate EIR to address the potentially significant impacts described in this comment letter and the attached letter. 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.

Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,



Christina M. Caro

CMC:acp  
Attachments

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<sup>117</sup> *Id.*

<sup>118</sup> 14 CCR §15063(b)(1).

<sup>119</sup> *Bakersfield*, 124 Cal.App.4th at 1220.