

May 18, 2018

VIA EMAIL

Sergio Ibarra
Major Projects Section
Department of City Planning
City of Los Angeles
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Re: 520 Mateo FEIR (Environmental Case # ENV-2016-1795-EIR)

Dear Mr. Ibarra:

This law firm represents the Southwest Regional Council of Carpenters (Southwest Carpenters) and submits this letter on the above-referenced project on its behalf.

Southwest Carpenters represents 50,000 union carpenters in six states, including in Southern California, and has a strong interest in addressing the environmental impacts of development projects such as the 520 Mateo Project (Project). The City of Los Angeles (L.A.) released a Final Environmental Impact Report (EIR) detailing the impacts of the Project on April 12, 2018.

According to the EIR, the proposed Project would include (1) the demolition of an existing 80,736-square foot two-story warehouse, and (2) construction of a 150-foot-high, 13-story building, with a total floor area of approximately 584,760 square feet and a floor-area ratio of 6:1. The Project would construct 600 dwelling units, 20,000 square feet of office space, 15,000 square feet of restaurant space, 15,000 square feet of retail space, and 10,000 square feet of "cultural" space. The Project would construct one at-grade parking level and three below-grade parking levels, with ingress and egress to and from Santa Fe Avenue.

Project approvals include:

- a General Plan Amendment to amend the General Plan land use designation of the Project Site from Heavy Manufacturing to Regional Center Commercial;

- Vesting Zone Change and Height District Change to change the zoning of the Project Site from M3-1-RIO (with a 1.5:1 FAR) to C2-2-RIO (which provides for a limitless building height);
- Site Plan Review findings for a development project that results in an increase of 50,000 gross square feet or more of non-residential floor area, 50 or more dwelling units, and an addition of 1,000 or more average daily trips;
- Zoning Administrator Determination findings to reduce parking for Joint Living and Work Quarters; and
- Vesting Tentative Tract Map (No. 74529) for a subdivision creating 16 “lots” (one master lot and 15 “airspace” lots).

The effect of the General Plan and Zone Change would be to create a “spot zone,” consisting of a single-parcel C2-2-RIO island, which allows residential uses and buildings of unlimited height, surrounded by the M3 District, which prohibits residential uses and contains strict FAR limits.

Below, we present our comments regarding L.A.’s environmental analysis.

A. Greenhouse Gas Emissions

As a matter of initial clarification, L.A. misstates the impetus of the CEQA Guidelines recommendations regarding an agency’s analysis of greenhouse gas impacts. In full, the relevant subsection reads:

- (b) A lead agency should consider the following factors, among others, when assessing the significance of impacts from greenhouse gas emissions on the environment:
- (1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;
 - (2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; and
 - (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.

(14 Cal. Code Regs. § 15064.4(b); *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204.) Contrary to L.A.'s statement in its EIR, there are three recommended *factors*, all of which the Guidelines state L.A. should consider in its evaluation of Project impacts. Please explain why L.A. has ignored any of the above factors. And, please further disclose whether any of the plans and policies relied on by L.A. in its greenhouse gas discussion have been adopted by L.A. "through a public review process." Use of various plans and policies not designed to apply to greenhouse gas impacts, or to specific Projects, absent adoption containing valid reasoning as to their use, may devolve L.A.'s impacts analysis into an ad hoc, and largely arbitrary, affair.

L.A. does not have a Climate Action Plan that establishes quantitative thresholds of significance. In place of a Climate Action Plan, L.A. uses, *inter alia*, the California Air Resources Board (CARB) AB 32 Scoping Plan (2014 update), the Southern California Association of Governments 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy (RTP), and ClimateLA Implementation Plan.

L.A. is aware of the recent Supreme Court Opinion, *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204; however, it does not seem to fully grasp its significance. In that case, the Court criticized the application of the CARB AB 32 Scoping Plan to a specific project, noting that the statewide greenhouse gas reduction plan is not made or intended to be used as a project-specific analytical tool to evaluate the impacts of greenhouse gases. The Court noted, "neither Assembly Bill 32 nor the Scoping Plan establishes regulations implementing, for specific projects, the Legislature's statewide goals for reducing greenhouse gas emissions . . . the Scoping Plan does not propose statewide regulation of land use planning but relies instead on local governments." *Id.* at 223, 229. Although the Supreme Court *hypothesized* that "a business-as-usual comparison based on the Scoping Plan's methodology may be possible," the Court also cautioned that "doubt has been cast on the Scoping Plan's project-level appropriateness."

L.A. has chosen to compare the Project to a no-action-taken scenario, and to draw conclusions regarding the Project by stating the percentage decrease of greenhouse gases the Project will achieve in relation to the no-action-taken scenario—an analysis startlingly similar to that undertaken by respondents, and denounced by the Supreme Court, in *Center for Biological Diversity*. While L.A. recognized that, to use the Scoping Plan's "percent reduction from business as usual" analysis, it would be required to explain why the use of a non-project-specific statewide greenhouse gas reduction goal would be appropriate at the project level, it failed to provide such analysis. Absent this analysis, L.A.'s greenhouse gas section falls victim to the same violations that were fatal to respondents in *Center for Biological Diversity*. Please explain

why L.A.'s use of the Scoping Plan and other regional and city plans not designed to address greenhouse gas emissions, meets the standards set forth in *Center for Biological Diversity*.

L.A. has not set significance thresholds for Project-level greenhouse gas emissions and, thus, has not disclosed whether it has even determined Project emissions to be significant. One of the central purposes of an EIR is to disclose the significant environmental impacts of a project: "Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. (14 Cal. Code Regs. § 15064.7(a).) "Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule or regulation, and developed through a public review process and be supported by substantial evidence. (14 Cal. Code Regs. § 15064.7(b).)

Absent a means by which L.A. and members of the public can determine whether a given impact is significant, it is impossible to determine whether L.A.'s conclusions regarding the proposed mitigation are valid: "In the absence of substantial evidence to support the EIR's no-significance finding, as noted above, the EIR's readers have no way of knowing whether the project's likely greenhouse gas emissions impacts will indeed be significant and, if so, what mitigation measures will be required to reduce them. This is not the sort of '[i]nsubstantial or merely technical omission[]' that can be overlooked in deciding whether to grant relief." (*Center for Biological Diversity v. Department of Fish & Wildlife* 62 Cal.4th at 229.) Please detail how, or whether, the City has determined the significance of the Project's greenhouse in the absence of properly adopted significance thresholds. Absent the use of identifiable significance standards, L.A. has failed to state (1) what would constitute a significant impact, and (2) whether the Project's emissions exceed this threshold. Further, there can be no facts to support the City's determination that the Project's impacts will be reduced less than significant, because it has not even determined what "significant" is, in violation of CEQA. (14 Cal. Code Regs. § 15126.2(a) ("An EIR shall identify and focus on the significant environmental effects of the proposed project."))

Further, L.A.'s analysis regarding consistency with the CARB AB 32 Scoping Plan is confusing:

The net emissions for the Project and its associated CARB 2020 NAT scenario are estimated to be 11,369 and 17,398 MTCO₂e per year, respectively, which shows the Project will reduce emissions by 33 percent from the CARB 2020 NAT scenario. The proposed emissions would represent a net 5,496 metric ton reduction in annual emissions from the NAT scenario when accounting for existing emissions from current development. Based on these results, the Project is consistent with the reduction target as a numeric threshold (15.3 percent) set forth in the 2014 Revised AB 32 Scoping Plan.

This analysis provides no explanation as to how L.A. arrived at this 15.3 percent reduction target, or how it formulated its NAT scenario. Please provide a citation to the relevant part of the AB 32 Scoping Plan that advises agencies to use a 15.3 percent reduction target; a review of this document did not reveal any such figure or recommendation.

There appears to be a disconnect between L.A.'s analysis of impacts and the actual mitigation proposed. While L.A. compares the Project to a "no-action-taken" scenario, it determines that proposed mitigation will result in reduction of thousands of metric tons of carbon dioxide equivalent. Yet, L.A. has only proposed one mitigation measure – "At least five percent of the total code-required parking spaces shall be equipped with EV charging stations." Please provide evidence to support L.A.'s conclusion that adoption of this single mitigation measure will reduce direct and indirect greenhouse gas emissions by over 5,000 MTCO_{2e}. Otherwise, please provide further explanation as to the validity of L.A.'s NAT analysis.

L.A.'s cumulative impacts discussion of greenhouse gas impacts is incomplete. Specifically, L.A. has failed to provide discussion of city or regional trends indicating whether L.A.'s policies and thousands of past, pending, and foreseeable project approvals are increasing local and regional greenhouse gas emissions, or whether L.A.'s policies are realizing reductions in these emissions. In the case of the former, please explain how L.A. could determine cumulative greenhouse gas impacts are less than significant if L.A.'s liberal project approval policies are increasing, rather than decreasing, citywide and regional greenhouse gas emissions, presumably resulting hundreds of thousands to millions of additional metric tons of carbon dioxide-equivalent emissions each year.

B. Air Quality

L.A. provides at least two thresholds of significance. According to the EIR, Project impacts would be significant if they:

- "contribute substantially to an existing or projected air quality violation"
- "Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is [in] non-attainment under an applicable federal or State ambient air quality standard."

L.A.'s states its air basin is currently in nonattainment for ozone (O₃), PM₁₀, and PM_{2.5}. While possibly in attainment for other criteria pollutants, such as SO_x and volatile organic compounds (VOCs), these pollutants are precursors to ozone, a pollutant for which L.A. is currently in nonattainment. Aside from disclosing its ozone nonattainment status, L.A.'s discussion of air quality impacts does not adequately address or disclose the Project's ozone

impacts, including precursors NO_x and VOCs, for which the air basin is in nonattainment. Please disclose how the Project will affect L.A.'s ozone nonattainment status. If the Project will worsen this status, please explain why this worsening is not individually or cumulatively significant.

Regarding its discussion of cumulative impacts, L.A. focuses exclusively on carbon monoxide emissions. However, in Table 4.C-6, L.A. states the Project would cause significant impacts in relation to PM_{10} and $\text{PM}_{2.5}$ emissions, yet provides no analysis as to the potential cumulative impacts. Further, L.A. discloses the Project will emit all other types of criteria pollutants, including NO_x , SO_x , and VOCs; yet provides no discussion or conclusions as to the cumulative significance of any of these other emissions.

A "cumulative impact" is described as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (14 Cal. Code Regs. § 15355.) Further, "The individual effects may be changes resulting from a single project or a number of separate projects," and "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (14 Cal. Code Regs. § 15355.) Using this standard, please describe whether the Project will contribute to cumulatively significant air quality impacts as to any combination of its emissions.

Table 4.C-3 discloses existing emissions of various criteria pollutants; however, this table lacks units for measurement. Please provide information as to these units of measurement for all tables in the Air Quality section of the EIR for which this information is missing.

Regarding L.A.'s determination that the Project will have less than significant localized impacts as to all criteria pollutants, the only information L.A. provided to support this conclusion was Table 4.C-9. Table 4.C-9 disclosed that emissions for PM_{10} and $\text{PM}_{2.5}$ would be 10 and 6, respectively. Directly below this, and without any reasoning or explanation, L.A. reduces these emissions values to "<8" and "4," respectively, conveniently below the localized thresholds of significance of 8 and 5. Please explain why these values differ between lines.

Finally, because L.A.'s conclusion that the Project will cause less than significant direct, indirect, and cumulative air quality impacts is based on a faulty, incomplete impacts analysis, L.A.'s failure to provide additional mitigation represents an abuse of discretion. For instance, L.A. proposed no mitigation measures for the operation phase of the Project because it determined impacts would be less than significant prior to mitigation. (14 Cal. Code Regs. § 15126.4(a) ("An EIR *shall* describe feasible mitigation measures which could minimize significant adverse impacts."); 14 Cal. Code Regs. § 15126.4(a)(2) ("Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments."))

C. Hazardous Materials

L.A. has failed to disclose whether Project soils may contain concentrations of hazardous substances, and it has not provided adequate mitigation to address these potential impacts.

The environmental setting, or baseline, should describe “the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published.” (14 Cal. Code Regs. § 15125(a).) Here, the Project site is in the heart of L.A.’s industrial district. Due to this, work on the Project site has a much higher likelihood of exposing workers, tenants, etc. to toxic or carcinogenic materials. L.A. must disclose the baseline environmental conditions of the Project site, including whether Project soils contain hazardous materials. L.A. must further disclose whether the Project will expose workers, passersby, and future Project users to these toxic materials.

L.A.’s proposed mitigation is inadequate. As mentioned above, L.A. must describe feasible, enforceable, and binding mitigation measures that would reduce Project impacts. (14 Cal. Code Regs. § 15126.4(a).) L.A. must describe these measures in sufficient detail in the EIR so that members of the public and decisionmakers will be able to determine whether the proposed mitigation measures would, in fact, effectively reduce environmental impacts. CEQA Guidelines specifically warn against deferring mitigation until after Project approval: “Formulation of mitigation measures should not be deferred until some future time.” (14 Cal. Code Regs. § 15126.4(a)(1)(B).)

Here, L.A. has failed to provide detailed, binding, and enforceable mitigation measures to address the hazardous materials impacts of the Project:

Following demolition of the existing structures and removal of the debris from the Project Site, a full Phase II Environmental Site Assessment of the Project Site shall be performed. If soil and/or groundwater contamination is encountered, a detailed Soil Management Plan for the segregation of contaminated soils and materials shall be developed and implemented in accordance with applicable laws and regulations.

First, as mentioned above, it is impermissible for L.A. delay discovery of the environmental setting until after Project approval. It is impermissible for L.A. to refuse to disclose the baseline; L.A. cannot rely on its self-imposed ignorance to protect itself from CEQA’s disclosure and mitigation requirements. Further, L.A.’s proposed mitigation is not binding or enforceable and it constitutes illegal deferral of mitigation measures. L.A. provides no discernible standards against which to judge the effectiveness of the “Soil Management Plan,”

or even whether such a plan will ever be developed or enforced. It is apparent from the EIR that L.A. has not considered or defined such standards for the Project.

D. Parks and Recreation

L.A. states the Project is required to create 66,750 square feet of open space, per the Los Angeles Municipal Code (LAMC). However, in concluding that the Project meets this standard, L.A. counts the private balconies of future residents as part of this open space. A personal balcony does not serve the same purpose or create the same benefits as public parks or open space. According to this perverse logic, residential neighborhoods which contain backyards would have no need for public parks. This cannot be the intent of L.A. provisions regarding open space. Counting private balconies as open space misrepresents a project impact (extra residential floorspace) as project mitigation, in violation of CEQA.

Please explain why L.A. believes it is permissible to count private floorspace as parks/open space. Further, please disclose whether these balconies will be accessible to members of the public, as would be the case for parks and open space, and whether L.A. has ever considered personal backyards or balconies as counting towards open space in any other project that has come before it. Finally, L.A. does not provide information as to the square footage/percentage of the 66,750 square feet of open space it attributes to the Project is comprised of personal balconies. Please disclose this information, as well.

Further, some of the open space L.A. counts as mitigation is not even guaranteed. L.A. relies on at least some of this "open space" as coming from a roughly 50,000 square-foot strip of land the Project applicant may never acquire. Please disclose how much of the 66,750 square feet of open space would be lost if this strip is not obtained, and whether the remaining *actual* open space (not counting private balconies) would satisfy LAMC standards. Absent evidence to the contrary, L.A. should assume the applicant will be unable to purchase this strip of land, and L.A. must require mitigation measures accordingly.

L.A. creates even less clarity when discussing L.A.'s impact fees. L.A. states the Project applicant shall pay applicable Quimby and Finn fees for the construction of dwelling units. However, L.A. cites two separate impact formulas, requiring either four or six acres of park land for each 1,000 residents. Between these two formulae, the Project would be expected to generate a demand of 6.65 acres or 9.97 acres of new parkland, respectively. Please specify which of these formulae L.A. is using to determine the impact fees for the Project, and whether the Project will be conditioned on satisfaction of supplying sufficient impact fees to purchase the requisite acreage of parkland. Further, please clarify how the Quimby and Finn fees relate to the purchase of parkland.

E. Land Use

As mentioned above, the Project proposes the creation of a residential “spot” zone island in the middle of L.A.’s major industrial zone. While L.A. has proposed a General Plan amendment, it is unclear whether it plans a concurrent amendment to its Central City North Community Planning Area. As L.A. recognizes, this document represents the Housing Element for this portion of L.A.’s General Plan. This document cannot be read as encouraging the creation of high-rise residential development in the heart of L.A.’s industrial zone. The Project is inconsistent with the Housing Element.

Several Central City North Community Planning Area policies emphasize that the Project is exactly the type of development that is *discouraged* in the Central City North planning area: “industrial planned parcels located in predominately industrial areas should be protected from development by other uses which do not support the industrial base of the City and the community.” One of the few named concerns this planning document seeks to prevent is “Intrusion of commercial and residential uses into previously industrial areas.” This plan emphasizes that “the industrial sector needs to be encouraged and protected,” and that L.A. must “retain industrial plan designations” in this area.

The Project is the poster child for the type of development the Central City North Community Planning Area vehemently opposes. Please clarify whether L.A. plans revisions to this portion of its Housing Element. If L.A. does not amend its Housing Element at this time, the Project will be patently inconsistent with L.A.’s Housing Element, and its General Plan will lack lateral consistency.

F. Population and Housing

In the Executive Summary, L.A. states the Project “represent[s] 0.0036 percent of projected population growth and 0.035 percent of household growth in the City of Los Angeles through 2040.” This statement must be corrected. Under this estimate, L.A. would be projecting its 2040 population to be over 46 million. This estimate represents nearly the entirety of the projected California population in 2040 and is several orders larger than the region’s projected 2040 growth estimates. Elsewhere in the EIR, L.A. states, “During the 2012 to the 2040 forecast timeframe, the Project’s population and housing would represent less than one percent of the City’s projected growth.” This does not fully disclose the population and housing impacts of the Project. Please clarify L.A.’s estimated 2040 population increase, as well as the Project’s share of that increase.

I. Geology and Soils

The Project is massive, and it will exert a large force upon the ground of the Project site. When compared to other development within the M3 District (almost none of which are greater than two stories high), the Project creates a much higher risk of liquefaction. Although the issue of liquefaction is of great concern to the future stability of the Project and the health and safety construction workers and future users of the Project, L.A. does not provide consistent information regarding the depth of water underneath the Project site. Specifically, in one section, L.A. states, “Groundwater levels in the vicinity are noted to be approximately 100 feet below ground surface.” In another section, L.A. contradicts this statement: “A review of data from nearby water monitoring wells indicates that groundwater occurs at a depth of approximately 75 feet in the vicinity of the Project Site.” Further, it does not appear as though L.A. considered the *depth* of the Project when discussing the potential of the Project to cause liquefaction. L.A. states the Project will contain three below-ground parking levels, bringing the Project to a depth of at least 33 feet below ground level. This depth places the Project at a greater risk of causing liquefaction than disclosed in the EIR.

To serve its purpose of disclosing environmental impacts, the EIR must provide accurate information. Here, the EIR is internally contradictory and does not accurately disclose Project impacts, in violation of CEQA. The EIR further violates CEQA due to its failure to propose mitigation measures, if any can feasibly reduce Project impacts.

J. Aesthetic Impacts

L.A. states it is not required to provide information regarding aesthetic impacts. Regardless, L.A. has provided this information, and the information provided in the EIR must be accurate.

The Project is adjacent to 544 Mateo, which is the site of the Pan Pacific Warehouse, which has been used regularly in filming—including “It’s Always Sunny in Philadelphia,” “Parks and Recreation,” “Repo Man,” “Witchboard 2: The Devil’s Doorway,” “Date Night,” “Lovelace,” “National Treasure,” “Color of Night,” “Columbo,” “Rising Sun,” and “The Royal Road.” The Project will affect the aesthetics of the surrounding neighborhood, which contains no tall buildings, and it will particularly affect the cinematic aesthetic of 544 Mateo, which currently has short industrial buildings as its backdrop. The Project proposes construction of a 150-foot-tall, modern building, which is entirely out of character with this neighborhood and will reduce or eliminate the cinematic value and use of 544 Mateo and the surrounding neighborhood. L.A. does not disclose these Project impacts in the EIR, as required.

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Conclusion

Southwest Carpenters thanks L.A. for the opportunity to comment on the Project FEIR. Moving forward, please send all future notices relating to the Project to Nicholas Whipps at nwhipps@wittwerparkin.com. Thank you for your consideration of these comments.

Very truly yours,
WITWER PARKIN LLP



Nicholas Whipps