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October 24, 2018

Via Hand Delivery and Email

Deputy Advisory Agency and Hearing Officer on behalf of City Planning
Commission
City of Los Angeles
cpc@lacity.org

**Re: Comments on the Final Environmental Impact Report for the Fig
& 8th Project (ENV-2016-1951-EIR; CPC-2016-1950-TDR-SPR-MS; VTT-7497)**

Dear Deputy Advisory Agency members and Hearing Officer:

We write on behalf of the **Coalition for Responsible Equitable Economic Development** ("CREED LA") regarding the City of Los Angeles' ("City") Final Environmental Impact Report ("FEIR") prepared for the Fig & 8th Project (ENV-2016-1951-EIR; CPC-2016-1950-TDR-SPR-MS; VTT-7497) ("Project"), proposed by MFA 8th & Figueroa LLC ("Applicant").

On June 11, 2018, we submitted comments on the Project's Draft EIR ("Previous Comments"). The FEIR contains responses to our comments. However, the City's Responses and the FEIR fail to resolve all the issues we raised, as detailed below, and our comments still stand.¹ In short, the FEIR's conclusions are not supported by substantial evidence, and the FEIR must be recirculated to enable the public an opportunity to meaningfully comment on the new information it contains. In addition, the FEIR's energy use impacts analysis fails to comply with the law and is unsupported by substantial evidence.

We prepared these comments with the assistance of air quality expert Matt Hagemann, P.G., C.Hg. and Hadley Nolan of Soil / Water / Air Protection Enterprise ("SWAPE). Their technical comments are attached hereto as Exhibit A, are fully incorporated herein and require separate responses. We reserve the right to

¹ We incorporate our June 11, 2018 comments, along with their attachments and exhibit, herein by reference.
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supplement these comments at a later date, and at any later proceedings related to this Project.²

Based upon our review of the FEIR, appendices, and other relevant records, we conclude that the FEIR fails to meet the requirements of CEQA, because the City failed to properly disclose, analyze and mitigate the Project's significant impacts on air quality, public health and energy use. We urge the City to reject the FEIR and direct staff to prepare and recirculate a revised EIR that properly analyzes, addresses and mitigates the Project's potentially significant impacts, as required by CEQA.

(1) The FEIR's Conclusion Regarding Project's Impacts from NO_x is Not Supported by Substantial Evidence

In our Previous Comments, we showed that the City lacked substantial evidence to support a finding of overriding considerations for significant and unavoidable impacts from construction-related NO_x emissions, because there are feasible mitigation measures available to mitigate the impacts from construction-related NO_x emissions.

In its response, the City modified the FEIR to include a new mitigation measure that limits the number of daily hauling trips during the grading and excavation period to 135 trips per day. The City argues that the updated air quality analysis shows that implementation of the new Mitigation Measure (AIR-MM-5) would result in a maximum of 99 pounds per day of NO_x, just under SCAQMD's daily regional construction threshold of 100 pounds per day.

SWAPE reviewed the updated air quality analysis and found that the City's conclusion that implementation of AIR-MM-5 would result in a maximum of 99 pounds per day of NO_x, just under SCAQMD's daily regional construction threshold of 100 pounds per day, relies on two major erroneous assumptions and thus is not supported by substantial evidence.

² 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.
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First, SWAPE found that the updated analysis failed to account for all the materials that would be removed and hauled during the grading phase of construction. The CalEEMod modeling of the DEIR assumed a total of 32,000 grading hauling trips would be required to export all of the grading material. The FEIR did not change this assumption. However, it assumed a 118-day grading phase, with a limit of 135 trips per day. Because $135 \text{ trips} \times 118 \text{ days} =$ a total of 31,860 hauling truck trips, there is a total of 140 hauling truck trips that are unaccounted for in the "Trips and VMT" table within the FEIR's revised CalEEMod modeling.³

Even more importantly, SWAPE found that the City incorrectly applied mitigation measures in the revised CalEEMod, thus overstating the mitigation and significantly reducing the project's expected impacts without factual support.

As SWAPE explains, the revised Mitigation Measure AIR-MM-1 requires that off-road construction equipment which is equal or exceeds 50 horsepower and will be used during the grading/excavation phase of construction shall meet or exceed Tier 3 CARB/U.S. EPA standards.⁴ SWAPE found that the grading/excavation phase will only require 5 pieces of construction equipment that have a horsepower equal to or greater than 50 hp, and therefore, *only 5 pieces of equipment are expected to be equipped with Tier 3 engines during Project construction.*

However, SWAPE's review of the revised CalEEMod model found that *all 39 pieces of construction equipment were assumed to be mitigated.* SWAPE found that all but one piece of equipment was assumed to be equipped with Tier 3 engines and one piece of equipment was mitigated with a Tier 2 engine. As SWAPE explains "[m]odeling emissions assuming a fleet equipped with almost entirely Tier 3 equipment is completely incorrect and significantly underestimates emissions."⁵ As a result, the City's conclusion that the Project does not have significant impacts from NOx emissions is not supported by the evidence.

³ Exhibit A: SWAPE's comments, p. 3-4.

⁴ FEIR, p. III-5, III-6.

⁵ Exhibit A: SWAPE's comments, p. 4.

(2) The Project Will Have Significant Impacts from NOx Emissions and Additional Mitigation Must be Incorporated

SWAPE prepared a CalEEMod model that includes more site-specific information and corrected input parameters, including the correct number of hauling trips and the correct number of mitigated construction equipment. SWAPE found that when the correct input parameters and assumptions are used, the Project's mitigated construction-related NOx emissions *exceed* the 100 lbs/day thresholds set forth by the SCAQMD (see table below).⁶

Mitigated Maximum Daily Construction Emissions (lbs/day)	
Model	NOx
FEIR	99
SWAPE	102
SCAQMD Regional Threshold (lbs/day)	100
Threshold Exceedance?	Yes

The FEIR must therefore be revised to include more feasible and available mitigation measures, as detailed in our Previous Comments, to mitigate the Project's significant impacts on air quality.

(3) The City Failed to Properly Analyze the Project's Impacts on Public Health

In response to our Previous Comments, the City revised the FEIR and conducted a health risk assessment (HRA) to assess the Project's construction impacts on public health. The City concluded that no significant health risk impacts would occur from construction of the Project.⁷ The FEIR states explicitly that the HRA does not account for "Age Sensitivity Factors" ("ASF") and argues that such factors "would not be applicable to this HRA as neither the Lead Agency nor

⁶ Exhibit A: SWAPE's comments, p. 4-5.

⁷ Response to Comments, p. II-38.

SCAQMD have developed recommendations on whether these factors should be used for CEQA analyses of potential construction impacts”.⁸

However, as SWAPE explains, the ASF are applicable to the Project and were, in fact, included in SCAQMD guidelines for Risk Assessment Procedures for Rules 1401, 1401.1 and 212, in order to properly reflect OEHHA’s updated guidance on health risk assessment.⁹ Therefore, the City’s conclusion in the FEIR is not supported by substantial evidence.

(4) The Project Will Have Significant Impacts on Public Health

In an effort to properly account for the Project’s construction-related cancer risk, SWAPE incorporated the appropriate Age Sensitivity Factors into the FEIR’s construction HRA calculations. The results of SWAPE’s updated analysis show that the excess cancer risks posed to the infant sensitive receptors at The Gas Lofts and 8th and Hope Apartments during Project construction is approximately 13.3 in one million and that the excess cancer risk over the course of construction is approximately 14.9 in one million. The infant and total construction cancer risks exceed the SCAQMD threshold of 10 in one million.¹⁰

(5) The FEIR’s Energy Use Analysis Fails to Comply with the Law, Is Unsupported by Substantial Evidence and Underestimates the Project’s Impacts from Energy Use

The City’s energy use impact analysis in the FEIR fails to comply with the law in several ways.

First, the City failed to compare the Project’s energy use to energy use associated with the existing environmental setting - a parking lot. Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.¹¹ Therefore, it is a central concept of CEQA, widely accepted by the courts, that the significance of a project’s

⁸ Response to Comments, p. II-43.

⁹ <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/riskassprocjune15.pdf?sfvrsn=2>

¹⁰ Exhibit A: SWAPE’s comments, p. 5-8.

¹¹ *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 952. 3951 006aep

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impacts cannot be measured unless the DEIR first establishes the actual physical conditions on the property. In other words, baseline determination is the first rather than the last step in the environmental review process.¹²

In this case, the City repeatedly concludes in the FEIR that a certain energy use is only a small percentage of the overall project energy use or the overall or projected energy use in the region, rather than greater, equal to or less than energy use from the existing setting; for example:

- Construction energy use is approximately 0.8 percent of net annual operational demand. (p. IV.K-18)
- Fuel usage during Project construction would represent approximately 0.003 percent of the 2016 annual on-road gasoline related energy consumption and 0.02 percent of the 2016 annual diesel fuel-related energy consumption in L.A. County. (Id.)
- Electricity consumption of 2,933 MWh per year would represent approximately 0.01 percent of LADWP's projected sales in 2022. (p. IV.K-20; p. IV.K-24.)
- Natural gas use would account for approximately 0.001 percent of the 2022 forecasted consumption in SoCalGas' planning area. (Id.)

Clearly, the City's description of the Project's energy use as compared to the Los Angeles or Southern California region's projected energy use improperly minimizes the Project's energy use impacts and fails to comply with CEQA. CEQA requires the City to acknowledge, disclose and mitigate the increased energy use compared to the energy use in the existing environmental setting, which is a parking lot.

Second, the City failed to compare the Project energy use to CEQA's thresholds for measuring wasteful, uneconomic, inefficient or unnecessary consumption of energy in Appendix F and to the more recent threshold set forth in

¹² *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal. App. 4th 99, 125; see *Communities for a Better Environment v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal. 4th 310, 321 ("the impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis").

Governor Brown's Executive Order B-55-18. Under CEQA, wasteful, uneconomic, inefficient or unnecessary consumption of energy means exceeding a threshold of significance in the energy use impact areas identified in Appendix F. This includes asking whether the project's energy requirements by amount and fuel type during construction, operation, maintenance and/or removal and from materials is significant, whether the project comply with existing energy standards, whether the project will have a significant effect on energy resources and whether the project will have significant transportation energy use requirements, among other questions. For each of these questions, CEQA Guidelines Appendix F asks whether the project decreases overall per capita energy consumption, decreases reliance on fossil fuels, and increases reliance on renewable energy sources. Appendix F explains that these are the means to ensure wise and efficient use of energy. If a project does not decrease overall per capita energy consumption, decrease reliance on fossil fuels, and increase reliance on renewable energy sources, then the Project does not ensure wise and efficient use of energy and, therefore, results in a wasteful, inefficient and unnecessary consumption of energy. Furthermore, the FEIR contains no analysis of whether the Project's energy use is carbon neutral under Governor Brown's Executive Order B-55-18. The question is, for example, whether the project's energy requirements by amount and fuel type during construction, operation, maintenance and/or removal and transportation is carbon neutral. This analysis of carbon neutrality is consistent with Appendix F's explanation of the means to ensure wise and efficient use of energy. The FEIR contains no such analyses.

Third, the FEIR fails to comply with CEQA's requirement to evaluate the environmental impacts of "[t]he project's projected transportation energy use requirements...".¹³ Instead, the FEIR completely omits any discussion about the Project's proposed 517 parking spaces and the energy use associated with the vehicles that will be induced to the Project site. (DEIR, p. IV.K-28.)

Fourth, the City argues its proximity to transit necessarily means some of the transportation energy impact was mitigated and that it has mitigation measures designed to reduce vehicle trips. However, the City cannot say how much less transportation energy is needed for the project as approved because the issue is not quantified and disclosed in the FEIR. (DEIR, pp. IV.K-28 and -29.) "CEQA EIR

¹³ CEQA, Appendix F, § II, C.6.
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requirements are not satisfied by saying an environmental impact is something less than some previously unknown amount.”¹⁴

Fifth, the City failed to evaluate whether renewable energy resources might be available or appropriate and should be incorporated into the Project, as required by CEQA.¹⁵ Instead, the City merely stated the Project would comply with a requirement for “solar-ready buildings and, as such, would not preclude the potential use of alternative energy sources.” (DEIR, p. IV.K-20.) The City’s analysis is a far cry from evaluating whether renewable energy resources should be incorporated into the Project and does not ensure that the Project’s energy use would be wise and efficient.

Sixth, the City’s conclusions regarding transportation energy use are not supported by substantial evidence. The FEIR estimated that the Project requires 32,000 hauling truck trips in order to remove 81,000 cubic yards of grading soil and material from the Project site. However, SWAPE found that the “Calculation of Gasoline and Diesel Usage During Phase 1 Construction (Onroad Vehicles)” table in Revised DEIR Appendix N demonstrates that the City only accounted for approximately 12,172 hauling truck trips – less than half the number of hauling truck trips required to construct the Project. As a result, the amount of diesel required during all phases of construction is *underestimated by approximately 19,828 hauling trips*. Therefore, the FEIR underestimates construction energy use and the City’s conclusion regarding the Project’s energy use impacts is not supported by substantial evidence and should be revised.

In sum, the FEIR is inadequate as an environmental document because it fails to comply with the law and fails to properly disclose, analyze and mitigate the Project’s significant impacts on air quality, public health and energy use. Therefore, the City cannot approve the Project until it prepares a revised EIR that resolves these issues and complies with CEQA’s requirements.

¹⁴ *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 210

¹⁵ *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 211.
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Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Nirit Lotan', with a stylized flourish at the end.

Nirit Lotan

CC: jonathan.chang@lacity.org