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October 29, 2019

Via Email and Hand Delivery

Agenda Item Nos. 10 and 11

Planning and Land Use Management Committee
Los Angeles City Council
c/o Office of the City Clerk
City of Los Angeles
City Hall, Room 395
Los Angeles, California 90012
Email: clerk.plumcommittee@lacity.org
andrew.choi@lacity.org

Re: **Appellant CREED LA's Response to Department of City Planning
Appeal Response regarding the Southern California Flower Market
Project (Council File Nos. 19-1048 and 19-1048-S1)**

Dear Honorable Committee Members:

On behalf of appellant **Coalition for Responsible Equitable Economic Development ("CREED LA")**,¹ we are writing to respond to the City Planning Commission's Appeal Response, dated October 24, 2019, prepared for the October 29, 2019, PLUM Committee hearing regarding the Southern California Flower Market Project ("Project"). The Project is located at 709-765 S. Wall Street, 306-326 East 7th Street, and 750-752 S. Maple Avenue, and includes an expansion and redevelopment of the existing Flower Market facility between Maple Avenue and Wall Street, south of 7th Street, and a new mixed-use development consisting of wholesale trade, retail, restaurant, office, and residential uses. (Planning Case Nos. VTT-74568-1A; ENV-2016-3991-EIR; and CPC-2016-3990-GPA-VZC-CUB-ZV-SPR.)

¹ 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.

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This hearing involves two separate appeals by CREED LA challenging the Planning Commission's Letters of Determination for the Project, including the August 26, 2019 VTT Letter of Determination and August 26, 2019 CPC Letter of Determination for the Project. The Appeal Response contains responses to some of the issues raised in our first appeal ("VTT Appeal"), and fails entirely to respond to the issues raised in our second appeal ("CPC Appeal"). The responses provided fail to resolve the issues we raised. As detailed below, the issues raised in the Appeals and in CREED LA's prior comments on the Project still stand.

In short, the Environmental Impact Report ("EIR") prepared for the Project fails to comply with the requirements of the California Environmental Quality Act² ("CEQA") because: (1) the Project description is inadequate, and (2) the Project's potentially significant impacts on air quality, health risk, noise, and geology and soils have not been adequately disclosed, analyzed, or mitigated. This response is supported by the technical comments of air quality consultant, James J. J. Clark, PhD, of Clark & Associates,³ who concludes that the EIR: (a) fails to adequately disclose and analyze the Project's significant cumulative impacts; (b) fails to effectively mitigate significant air emissions from construction; (c) fails to adequately disclose and mitigate significant levels of operational emissions; and (d) fails to perform an adequate health risk analysis from the Project's operational and construction emissions. This response is also supported by the technical comments from noise and acoustic consultant, Derek Watry of Wilson Ihrig,⁴ who maintains that the City still lacks substantial evidence to support its conclusion that the EIR's construction noise mitigation measures can be effectively implemented or enforced. As a result of these substantial errors and omissions, the EIR fails as an informational document, and fails to ensure that the Project's potentially significant impacts will be mitigated to the greatest extent feasible, as required by CEQA.

The Project is also inconsistent with the environmental provisions of the General Plan because the Project has numerous potentially significant environmental impacts on air quality, public health, and from construction noise that the City has failed to adequately mitigate. As a result of these deficiencies, the City lacks substantial evidence to support the required findings to approve the

² Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").

³ **Exhibit A:** Letter from Dr. James Clark to Camille Stough regarding Air Technical Comments on the Southern California Flower Market Project, October 28, 2019.

⁴ **Exhibit B:** Letter from Derek Watry to Camille Stough regarding Noise Technical Comments on the Southern California Flower Market Project, October 28, 2019.

Project's entitlements pursuant to CEQA, the Subdivision Map Act, and the Los Angeles Municipal Code.

As discussed herein, the Committee must therefore grant our Appeals and require the EIR be revised and recirculated in compliance with CEQA. Only in this way can the City ensure that the Project complies with all applicable state and local laws, including CEQA, and ensure that the City upholds its duty to protect the health and safety of its residents.

(1) Procedural Background of Appeals

On June 13, 2019, CREED LA filed an appeal of the Advisory Agency's approval of the Vesting Tentative Tract Map ("VTTM") and certification of compliance for the EIR. The June 13th Appeal and CREED LA's oral testimony on the land use entitlements were heard by the Planning Commission on August 8, 2019. On August 26, 2019, the Planning Commission denied CREED LA's June 13th Appeal, sustained the Advisory Agency's decisions, and approved the requested land use entitlements.⁵ CREED LA then filed two separate appeals to the Planning Commission's August 26th VTT Letter of Determination and August 26th CPC Letter of Determination, on September 5, 2019 and September 16, 2019, respectively, which is scheduled for public hearing before the PLUM Committee on October 29, 2019.⁶

On October 18, 2019, the Planning Commission issued a third erratum making "corrections and clarifications" to the Final EIR and incorrectly concluding that the changes do not require recirculation of the Draft EIR pursuant to Section 15088.5 of the CEQA Guidelines.^{7, 8} As discussed below, the erratum contains new substantive analysis and conclusions regarding the Project's potentially significant impacts, which require recirculation of the EIR.

⁵ See Letter of Determination for VTT-74568-1A; ENV-2016-3991-EIR, dated August 26, 2019 ("VTT LOD") and Letter of Determination for CPC-2016-3990-GPA-VZC-CUB-ZV-SPR, dated August 26, 2019 ("CPC LOD").

⁶ We incorporate herein by reference the following: CREED LA's June 13, 2019 Justification for Appeal (VTT-74568); August 6, 2019 Response to Appeal Report for August 8th Hearing; September 5, 2019 Justification for Appeal to City Council (VTT-74568-2A; ENV-2016-3991-EIR) ("**Second VTT Appeal**") and September 16, 2019 Justification for Appeal to City Council (CPC-2016-3990-GPA-VZC-HD-MCUP-SPR) ("**CPC Appeal**"), along with their attachments and exhibits.

⁷ Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").

⁸ Erratum No. 3 to the Final Environmental Impact Report for the Southern California Flower Market Project, issued October 18, 2019 ("Erratum 3").

On October 24, 2019, the Planning Commission prepared a response to CREED LA's September 5th appeal on the VTTM ("Appeal Response") and a letter recommending technical modifications. The Appeal Response fails to resolve the issues we raised.

Furthermore, as of the date of this letter, Planning Commission staff have not provided an Appeal Response to CREED LA's September 16, 2019 appeal letter regarding the land use entitlements under CPC-2016-3990-GPA-VZC-HD-MCUP-SPR (CPC Appeal).⁹ The City has therefore failed to resolve any of the issues raised in the CPC Appeal related to the Project's land use inconsistencies. These inconsistencies still remain, rendering the Project's entitlements inconsistent with State and local requirements. These inconsistencies require the Committee to uphold our CPC Appeal and deny the Planning Commissions' recommendations to approve the land use entitlements.

(1) The EIR Fails to Provide a Complete and Accurate Project Description and Fails to Analyze the Impacts of the Entire Project.

In its Appeal Response, the City repeats the Planning Commission's unsupported claim that the Draft EIR's ("DEIR") inclusion of text and figures describing the North Building Addition represents an adequate description of the entire scope of the Project.¹⁰ The Appeal Response also refers to Erratum 3, a document that is not part of either the DEIR or Final EIR ("FEIR"), to further argue that the DEIR contained an adequate project description for the entire Project.¹¹ However, the clarifications in the Appeal Response and Erratum 3 do not resolve the fact that the EIR contains inconsistent and missing descriptions of the North Building Addition throughout.

⁹ See CREED LA's September 16, 2019 Justification for Appeal of the Planning Commission's Letter of Determination, dated August 26, 2019 (CPC-2016-3990-GPA-VZC-HD-MCUP-SPR) ("CPC Appeal"). On October 28, 2019, the Planning Commission confirmed via email that they had not responded to the CPC Appeal.

¹⁰ Appeal Response, p. 2.

¹¹ Erratum 3 provides an additional summary of Section 2 of the DEIR as support that the DEIR provided a complete and consistent description of the Project (Erratum 3, p. 2-3).

The City points to various sections in the DEIR that are in the context of the entire Project or characterize the northern portion of the Project as a renovation. For example, Erratum 3 cites to DEIR pages 2-1 to 2-3, which describes the parking spaces required to comply with the City parking code.¹² The context of this section relates to the number of parking spaces as part of the new South building and *existing* north building.¹³ However, the existing north building that will be renovated is *not* the same as the North Building Addition addressed in our comments. As shown in the EIR's floor plans,¹⁴ the North Building Addition is a completely new structure that will require new physical construction, and is not a renovation of an existing building on the Project site.

Similarly, the Erratum states that the construction schedule on pages 2-5 and 2-6 of the DEIR encompasses all proposed construction activities, including the construction of the "new south building and renovations of the north building."¹⁵ Again, this language is inconsistent with the fact that the northern portion of the Project not only includes renovations of the existing north building, but also construction of the North Building Addition. However, the construction schedule provided in the DEIR fails to include sufficient detail to enable the public and decisionmakers to determine whether the construction schedule includes the additional construction of the North Building Addition at all because it does not distinguish between the phases of construction and renovation between the southern and northern portions of the Project site. The City also cites to various figures in the DEIR, but these figures are merely visual drawings and floor plans depicting the layout and square footage of proposed uses throughout the Project Site. They do not describe the North Building Addition or its potential environmental impacts.

As we noted in our Second VTT Appeal, the EIR's project description remains inconsistent and inadequate as an informational document for the public to review. In *Stoephenmilleniumhollywood.com*, the court determined that errors in an EIR's project description are prejudicial because the failure to include relevant information precludes informed decision making and informed public comment, regardless of whether a different outcome would have resulted if the public agency

¹² Erratum 3, p. 2.

¹³ Erratum 3, p. 2 and DEIR, p. 2-3.

¹⁴ DEIR, Figures 2-3, 2-5, 2-7, 2-9, 2-11, 2-13, 2-14, and 2-15.

¹⁵ Erratum, p. 3.

had complied.¹⁶ Similarly here, the Project description remains inconsistent and precludes the public from knowing with certainty that all impacts have been analyzed for the entire Project, including the North Building Addition. Additionally, the Erratum, which claims to only provide “clarifications and corrections” to the EIR, includes a new analysis on noise impacts on sensitive receptors as it relates to the North Building Addition. This new analysis is outside the scope of an erratum, which is intended to correct minor clerical errors in an existing document. Rather, CEQA requires that this new analysis be included in a revised EIR and recirculated so that the public can review and comment on what is obviously a substantive change to the EIR itself.

The EIR’s inadequate project description is an informational defect which renders the EIR inadequate as a matter of law. Without an accurate, stable and finite project description, the EIR remains inadequate, still fails to disclose and analyze all environmental impacts of the entire Project, and therefore fails to comply with CEQA.

(2) The EIR Fails to Disclose and Analyze Geology and Soil Impacts of the Entire Project.

As we explained in our Second VTT Appeal, the EIR’s 2016 Geotechnical Investigation Report (“2016 Report”) did not analyze the impacts from the North Building Addition, and was therefore no longer valid, by the EIR consultant’s own admission.¹⁷ The City admits in its Appeal Response that, at the time the 2016 Report was prepared, the North Building Addition had not yet been proposed as part of to the northern portion of the Project site. Rather than prepare and recirculate a new report containing additional analysis of impacts from the North Building Addition as part of a revised EIR, the City attached an updated 2019 Geotechnical Investigation Report (“2019 Report”) as part of Erratum 3 and concludes that the Project will not result in significant geology and soil impacts. In addition to being an impermissible use of an “erratum,” the City’s new geotechnical analysis lacks substantial evidence to support the City’s revised conclusion that the North Building Addition will not result in significant geology or soil impacts. The EIR therefore still fails to adequately disclose and analyze geology and soil impacts from the entire project.

¹⁶ *Stoepthemillenniumhollywood.com vs. City of Los Angeles*, (2019) 39 Cal.App5th 1, 20.

¹⁷ Second VTT Appeal, p. 6-7.

First, Erratum 3 notes that the 2019 Report merely clarifies, adds to, and makes insignificant modifications to the 2016 Report.¹⁸ This is problematic because the 2016 Report specifically limits the reliance on the report and its analysis to three years:

“The findings of this report are valid as of the date of this report. However, changes in the conditions of a property can occur with the passage of time, whether they are due to natural processes or the works of man on this or adjacent properties. In addition, changes in applicable or appropriate standards may occur, whether they result from legislation or the broadening of knowledge. Accordingly, the findings of this report may be invalidated wholly or partially by changes outside our control. **Therefore, this report is subject to review and should not be relied upon after a period of three years.**”¹⁹

This section of the report limits the validity of its findings, which are admittedly derived from the report’s 2016 analysis and studies, which predated the DEIR, and cautions that the findings should not be relied upon after a certain amount of time when conditions have changed. The City acknowledges that the 2019 Report continues to rely on findings from the 2016 Report, stating: “Because the 2016 [Report] included an investigation of the entire Project, the analysis contained in the 2019 [Report] **relies** on the site reconnaissance, field exploration, laboratory testing, and engineering analysis prepared for the 2016 [Report].”²⁰ Neither the City nor the consulting firm, Geocon West, Inc., provide reasoning as to why it decided to rely on the 2016 findings despite the above provision limiting the report to three years. In addition, the City does not provide any substantial evidence for its failure to analyze the impacts from the North Building Addition, or why the 2016 analysis is still reliable despite the fact that over three years have since passed.

Second, the Appeal Report contends that Mitigation Measure E-1 will adequately mitigate any potential impacts from the Project, including the North

¹⁸ Erratum 3, p. 5.

¹⁹ 2016 Report, *Limitations and Uniformity of Conditions* (dated July 29, 2016) (emphasis added).

²⁰ Erratum 3, p. 5 (emphasis added).

Building Addition, by complying with the recommendations of the 2019 Report and existing local regulations under the City’s municipal code.²¹ Since the City acknowledges that it did not conduct an additional analysis of impacts from the North Building Addition, but instead made modifications to the 2016 Report, the conclusion that implementing these mitigation measures would result in less than significant impacts is unsupported. In other words, without knowing what the significant impacts will be, the City lacks substantial evidence to support the conclusion that the mitigation measures are actually reducing impacts to less than significant levels. Indeed, mitigation measures that are vague or so undefined that it is impossible to evaluate their effectiveness are legally inadequate.²²

Additionally, the City’s reliance on the Project’s compliance with local regulations does not guarantee that potentially significant impacts will be mitigated to less than significant levels. The City must provide substantial evidence to support that conclusion.²³ Although the Appeal Response cites to various provisions of the City code with which the Project must comply, it provides no explanation as to how those regulations would mitigate unidentified significant impacts. This deferred mitigation measure does not provide adequate information for informed decision making under CEQA and results in improperly deferred analysis, not mitigation.²⁴

Finally, the City’s Appeal Response concludes: “As the North Building Addition is an entirely above-ground building and does not propose any significant excavation or earthwork activities, it is clear that the Addition would not significantly alter the existing geological and soil conditions on the site.”²⁵ A lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding.²⁶ Neither the City, nor the 2019 Report provide an analysis that results in a conclusion that the North Building Addition would not impact existing geology and soil conditions. As mentioned above, the North Building Addition is not the same structure as the

²¹ Appeal Response, p. 3.

²² *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

²³ *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 735–736. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794; Guidelines § 15126.4(a)(1)(B).

²⁵ Appeal Response, p. 3.

²⁶ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.
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existing North building where the Flower Market currently operates. Applying any analysis or findings based on the existing North building would be improper because the North Building Addition is a new structure with a different size, weight and use. The City's reliance on the 2019 Report to address these new impacts is therefore entirely unsupported.

“The EIR must contain facts and analysis, not just the bare conclusions of the agency.’ [Citation.] ‘An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”²⁷ The City has not provided substantial evidence to support its conclusion that the Project, including the construction and operation of the North Building Addition, will have less than significant impacts on geology and soil. The 2019 Report should be updated with a new analysis of impacts that account for the North Building Addition, and included in a revised EIR for circulation.

(3) The EIR Fails to Adequately Analyze and Mitigate the Project's Air Quality and Health Risk Impacts.

As we discussed in our previous appeals, the EIR fails to adequately analyze and mitigate the Project's air quality impacts and fails to disclose and analyze the Project's health risk impacts. We fully incorporate, reference and attach hereto the technical comments from air quality consultant, James J. J. Clark, PhD, of Clark & Associates.²⁸ Dr. Clark reviewed the EIR's air quality analysis, technical comments from SWAPE and Greg Gilbert, and the recent Appeal Response, Technical Modifications and Erratum 3. Dr. Clark concludes that the EIR: (a) fails to adequately disclose and analyze the Project's significant cumulative impacts; (b) fails to effectively mitigate significant air emissions from construction; (c) fails to adequately disclose and mitigate significant levels of operational emissions; and (d) fails to perform an adequate health risk analysis from the Project's operational and construction emissions. Because the EIR is fails to adequately disclose, analyze, and mitigate the Project's air quality impacts, the EIR must be revised accordingly and recirculated.

²⁷ *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197-98.

²⁸ **Exhibit A:** Letter from Dr. James Clark to Camille Stough regarding Air Technical Comments on the Southern California Flower Market Project, October 28, 2019.

a. The EIR fails to adequately disclose and analyze the significant cumulative impacts of the Project and related construction projects.

The EIR identifies 178 projects within the immediate vicinity of the Project site, which it concludes would be reasonably foreseeable to contribute to a cumulative impact on air quality in conjunction with the Project. However, the EIR concludes, with no quantitative analysis, that the Project's cumulative impacts would be less than significant because each of these individual projects will be required to achieve emissions levels below significance thresholds. The City also improperly defers its cumulative impact analysis to a future time, stating that any related projects that exceed thresholds would perform dispersion modeling to confirm whether health-based air quality standards would be violated.²⁹ As a result, the EIR contains no actual analysis on the cumulative impacts that will be generated by the Project combined with other related projects, in violation of CEQA. As a result, the City lacks substantial evidence to support the EIR's conclusion that cumulative impacts will be less than significant.

By contrast, there is substantial demonstrating that the Project is likely to have potentially significant cumulative air quality impacts from the concurrent construction of the Project with other reasonably foreseeable projects in its immediate vicinity. In his technical comments, Dr. Clark explains that there are numerous projects within the vicinity of the Project which are currently under construction, or proposed for construction.³⁰ Given that many of these projects under consideration are large in land size, have long construction periods, and anticipate substantial increases in various uses in the area, Dr. Clark concludes that it is highly probable that the sum of emissions from the various projects and this Project combined would result in cumulatively significant air quality impacts. As an example, Dr. Clark reviewed the disclosed emissions levels of particulate matter ("PM") PM 10 and PM 2.5 from a nearby proposed 10-acre project ("The City Market of Los Angeles Project") and its cumulative impact with this Project. His calculation demonstrated that the cumulative impact could be significantly above PM 10 and PM 2.5 thresholds just from the two projects combined.³¹

²⁹ DEIR, p. 4.C-21 to 4.C-22.

³⁰ **Exhibit A**, p. 2-4.

³¹ **Exhibit A**, p. 4.

The City must conduct a quantitative cumulative analysis on air emissions which includes the Project and all reasonably foreseeable surrounding projects, such as the City Market Project, and revise and recirculate the EIR to adequately disclose and mitigate all potentially significant cumulative impacts.

b. The EIR's Mitigation Measure MM C-1 fails to effectively mitigate the air quality impacts from construction emissions.

In response to our Appeals, the City contends that MM C-1 is an enforceable mitigation measure because "Tier 4" engines have been phased in for all engine types nationwide and Tier 4 equipment is now commercially available from all manufacturers, especially for common types of construction equipment.³² The Appeal Response goes on to say that, in the unlikely event that contractors are not able to secure acceptable equipment, the Applicant is required to demonstrate that an alternative meeting or exceeding Tier 4 standards exist.³³

Our previous appeals and technical comments from SWAPE and Greg Gilbert have provided substantial evidence demonstrating that Tier 4 standards are difficult for contractors to meet and implementation of Tier 4 equipment has been historically low. In comparison City has not provided substantial evidence to demonstrate that this mitigation measure is feasible for the Project to acquire 100% Tier 4 final equipment for the construction phase.

Additionally, we restate our concern regarding the general ineffectiveness of merely requiring "Tier 4" technology as a mitigation measure and provide additional context on the consequences of this measure. Critically, MM C-1 fails to distinguish between Tier 4 *interim* and Tier 4 *final* technology. As Dr. Clark explains, the difference in the use of Tier 4 interim versus Tier 4 final would have a significant impact on the emissions on site. While Tier 4 final can remove more than 90% of PM 2.5 emissions, Tier 4 interim only removes 80 to 90%.³⁴ According to Dr. Clark, CALEEMOD modeling showed a 25% increase in PM 2.5 exhaust emissions when utilizing construction equipment with Tier 4 interim technology.³⁵ Since MM

³² Appeal Response, pp. 5-6.

³³ *Id.*

³⁴ **Exhibit A**, p. 5.

³⁵ *Id.*

C-1 allows for any “Tier 4” technology, it necessarily allows for the use of exclusively Tier 4 interim construction equipment. Thus, construction equipment that is deemed compliant with the mitigation measure can continue to emit significant levels of PM 2.5. As such, MM C-1 is neither feasible nor effective in mitigating the air emissions from the Project’s construction equipment to less than significant levels.

The City therefore fails to provide substantial evidence to support its conclusion that construction emissions will be mitigated to less than significant levels. The EIR must be revised and recirculated with adequate mitigation measures that can be feasibly implemented and will effectively mitigate the significant construction emissions.

c. The EIR fails to adequately disclose and mitigate potentially significant levels of operational emissions.

Dr. Clark’s technical comments also discuss the EIR’s failure to disclose the significant levels of PM 10 and PM 2.5 associated with operational emissions. Dr. Clark points out that the data provided in the EIR actually show exceedances to local significant thresholds (“LSTs”).³⁶ The data also show that this discrepancy is a result of the City’s exclusion of emissions from operational mobile sources.³⁷ The City neither provides an explanation as to why mobile sources were omitted nor a quantitative analysis as to how they derived the conclusion that the emissions from operational activities would be less than significant. As such, the City has failed to provide substantial evidence that operational emissions would not be less than significant. The EIR must be revised and recirculated to correct this critical omission of the mobile sources and provide an adequate quantifiable analysis on the Project’s operational impacts.

d. The EIR fails to include an analysis of health risk impacts, as required by CEQA.

The Appeal Response continues to improperly rely on AB2588 to avoid its nondiscretionary duty to disclose the nature, extent, and severity of the Project’s impacts on human health. As stated in our previous appeals and letters, CEQA

³⁶ **Exhibit A**, p. 5-6.

³⁷ *Id.*

Guidelines and case law **require** agencies to analyze the health impacts of projects, even if a quantitative health risk assessment is not mandated. For example, Section 15126.2(a) of the CEQA Guidelines requires an EIR to discuss, *inter alia*, “health and safety problems caused by the physical changes” that the proposed project will precipitate.

Additionally, the Supreme Court recently held that, as a matter of law, an EIR as an informational document must discuss how air quality impacts are connected to adverse human health effects.³⁸ Similarly here, substantial evidence demonstrates that there are significant air quality impacts that must be analyzed as to their adverse effects on human health, particularly with toxic air contaminants (“TACs”). For example, as Dr. Clark points out, the operational emissions for PM 2.5 and PM 10 exceed LSTs and is indicative of health risk impacts. The Appeal Response also recognizes that PM 2.5 emissions correlate with TACs that form the basis of a health risk assessment, as both are “largely the result of emissions by heavy-duty diesel engines.”³⁹ There is substantial evidence in the record demonstrating that the Project is likely to result in potentially significant levels of construction and operational emissions. Nevertheless, the EIR fails to provide a full health risk analysis for both the construction and operational phases of the Project. This is a clear violation of CEQA which must be corrected in a revised and recirculated EIR.

(4) The EIR Fails to Adequately Mitigate the Project’s Construction Noise Impacts on Sensitive Receptors.

An agency may not rely on mitigation measures of uncertain efficacy or feasibility.⁴⁰ As we discussed in our Appeals and EIR comments, the EIR fails to adequately mitigate the Project’s construction noise impacts. We fully incorporate,

³⁸ *Sierra Club vs. County of Fresno, Sierra Club*, (2018) 6 Cal.5th 502, 516. *See also Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1369 (wherein the First District held that an EIR must include a “human health risk assessment”); *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219–1220, (wherein the appellate court held that an EIR was inadequate because it failed to correlate adverse air quality impacts to resulting adverse health impacts.).

³⁹ Appeal Response, p. 6.

⁴⁰ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).

reference and attach hereto the technical comments from noise and acoustic consultant, Derek Watry of Wilson Ihrig.⁴¹ Mr. Watry maintains that the City lacks substantial evidence to support its conclusion that construction noise mitigation measures, MM I-1 and MM I-2 can be effectively implemented or enforced.

First the EIR fails to provide any evidence to support the assumption that contractors will be able to implement the mitigation measure requiring mufflers for construction equipment to reduce noise levels by 3dB. For example, no manufacturer data has been presented by the City demonstrating that construction equipment.⁴²

Second, the EIR fails to demonstrate with any evidence that it is feasible to continually move and reposition the temporary noise barriers necessary to attenuate the sound for the Textile Building Lofts and/or Santee Court Apartments, as purported required by the mitigation measures. By contrast, as Mr. Watry explains, for certain equipment, it is functionally infeasible to move a 15 to 24 foot sound attenuation blanket to follow the equipment throughout the Project site in order to continuously block the line of noise and sight to sensitive receptors.⁴³ The very actions required for the measures to be effective may therefore be impossible for the Project's contractors to implement.

Finally, as Mr. Watry describes in his comments, the mitigation measures for noise provided in the updated Mitigation Monitoring Program (October 2019) ("MMP") are inconsistent with the claims in the Appeal Response that the measures will be effective.⁴⁴ Mr. Watry provides a side by side comparison of the language in the Appeal Response and the MMP and concludes that the MMP, as the enforceable document, does not comport with how the Appeal Response characterizes the noise mitigation measures.⁴⁵ Because the actual language in MM I-1 and MM I-2 is significantly different from the Appeal Response, the mitigation measures remain ineffective. The EIR therefore fails to adequately mitigate noise impacts to less than significant levels.

⁴¹ **Exhibit B:** Letter from Derek Watry to Camille Stough regarding Noise Technical Comments on the Southern California Flower Market Project, October 28, 2019.

⁴² **Exhibit B**, p. 1.

⁴³ **Exhibit B**, p. 2.

⁴⁴ **Exhibit B**, pp. 2-3.

⁴⁵ *Id.*

(5) The Vesting Tentative Tract Map violates the Subdivision Map Act.

As discussed in our Second VTT Appeal, the Committee must vacate the Planning Commission's approval of the VTTM until the EIR is compliant with CEQA and demonstrates that the Project will not have environmental and public health impacts. The Project must also be consistent with applicable general plans, specific plans and local codes governing development density as required by the Subdivision Map Act.⁴⁶

As explained above, the Appeal Response and Erratum 3 do not provide substantial evidence that the Project results in no significant impacts. As such, the City has not adequately met the required findings of compliance with state law, such as CEQA, and the protection of the community's health and safety.⁴⁷ Until the EIR is revised to address the significant impacts from air quality, noise, health risk, and geology and soil, the City must deny approval of the VTTM.

CONCLUSION

As discussed above, the EIR fails to provide an adequate analysis of environmental impacts from the entire Project and fails to provide substantial evidence to support the City's conclusions that the impacts will be less than significant. Our appeals should be granted and the EIR must be revised accordingly and recirculated for review and public comment.

Sincerely,

/s/

Camille Stough

CGS:acp
Attachments

cc: Adam Villani, adam.villani@lacity.org
Mindy Nguyen, mindy.nguyen@lacity.org

⁴⁶ Government Code § 66474(a) – (g).

⁴⁷ Government Code §§ 66498.1(c)(1) and 66498.1(c)(2).

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