

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL. (916) 444-6201  
FAX (916) 444-6209  
sdudley@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

601 GATEWAY BLVD., SUITE 1000  
SO. SAN FRANCISCO, CA 94080

TEL: (650) 589-1660  
FAX: (650) 589-5062

DANIEL L. CARDOZO  
CHRISTINA M. CARO  
YAIR CHAVER  
SARA F. DUDLEY  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
KYLE C. JONES  
RACHAEL E. KOSS  
NIRIT LOTAN  
MILES F. MAURINO

MARC D. JOSEPH  
*Of Counsel*

March 14, 2019

**Via Email and U.S. Mail**

Mr. Rene Bobadilla  
City of Commerce  
Public Works & Development  
Services Department  
Planning Division  
2535 Commerce Way  
Commerce, CA 90040  
**Email: [rbobadilla@ci.commerce.ca.us](mailto:rbobadilla@ci.commerce.ca.us)**

Lena Shumway  
Director of Administrative Services  
City Clerk  
2535 Commerce Way  
Commerce, CA 90040  
**Email: [lshumway@ci.commerce.ca.us](mailto:lshumway@ci.commerce.ca.us)**

Mr. Manuel Acosta  
City of Commerce  
Public Works & Development  
Services Department  
Planning Division  
2535 Commerce Way  
Commerce, CA 90040  
**Email: [macosta@ci.commerce.ca.us](mailto:macosta@ci.commerce.ca.us)**

**Re: Request to Extend the Public Review Period for the Draft  
Environmental Impact Report, Citadel Outlets Expansion  
& 10-Acre Development Project, Commerce California**

Dear Mr. Bobadilla, Mr. Acosta, and Ms. Shumway:

We are writing on behalf of the **Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA")** concerning the Draft Environmental Impact Report ("Draft EIR") for the Citadel Outlets Expansion & 10-Acre Development Project, which would permit the expansion of the Citadel shopping center and 10 acres of development along the northerly side of Telegraph Road between Hoefner Avenue (on the west) continuing east to Washington Boulevard, SCH No. 2016091024 ("Project").

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The Office of Public Research (“OPR”) State Clearinghouse states that the public review and comment period for the Project began on February 19, 2019 and closes on April 4, 2019.<sup>1</sup> We respectfully request that the City of Commerce (“City”):

1) withdraw the unfinished, administrative and incomplete copy of the Draft EIR and reissue a finalized, accurate, and complete Draft EIR, with a new comment period; or, in the alternative,

2) extend the public review and comment period on the Draft EIR for the Project by at least 45 days from the date that the City makes all documents referenced or relied upon in the Draft EIR available to the public.

This request is made pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. (“CEQA”) and Title 14, section 15000 et seq. of the California Code of Regulations (“CEQA Guidelines”).

**1. The City Must Withdraw the Unfinished Administrative Draft EIR and Reissue a Finalized Draft EIR with an Updated Comment Period.**

The City’s publication of an unfinished, incomplete, administrative draft DEIR for public review and comment violates CEQA. The document must be withdrawn and reissued, with an updated 45-day comment period.

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<sup>1</sup> We note that the Draft EIR states that the comment period runs from February 7, 2019 until March 22, 2019 (DEIR, p. 7, available at <http://www.ci.commerce.ca.us/DocumentCenter/View/4464>, last viewed March 11, 2019). However, the State Clearinghouse Notice of Completion reflects that the comment period began on February 19, 2019 and runs until April 4, 2019 (Office of Public Research, SCH No. 2016091094, Citadel Outlets & 10-Acre Project, Draft EIR Notice of Completion). The CEQA Guidelines, section 15087, subdivision (d) provides that “[w]hen a draft EIR has been submitted to the State Clearinghouse, the public review period shall be at least as long as the review period established by the State Clearinghouse.” Therefore, the earliest possible date that the comment period can close is April 4, 2019.

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CEQA review “is an integral part of any agency’s decision making process.”<sup>2</sup> The EIR is the “heart” of this requirement,<sup>3</sup> and has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”<sup>4</sup> To fulfill this purpose, the analysis and discussion in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”<sup>5</sup> An inaccurate, incomplete, administrative draft copy of an environmental review document misleads the public. The Legislature has stated, “it is the policy of the state that noncompliance with the information disclosure provisions of [CEQA] which precludes relevant information from being presented ... may constitute a prejudicial abuse of discretion ... regardless of whether a different outcome would have resulted [had] the public agency complied” with CEQA’s requirements.<sup>6</sup>

Here, on or about February 19, 2019, the City published a document purporting to be the Draft EIR for the Project.<sup>7</sup> An inspection of the document reveals numerous errors, inaccuracies, and inconsistencies, which make clear that this document is an unfinished draft of the DEIR. Draft versions of environmental review documents (sometimes termed “administrative drafts” or “screen-check drafts”) are not finalized documents.

Such errors, inaccuracies, inconsistencies include, but are not limited to, the following:

- the Table of Contents does not contain a reference to the Air Quality section, although that section is in the document;
- the Table of Contents does not list any appendices, although Appendices A to D are referenced in the document;

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<sup>2</sup> Pub. Resources Code, § 21006.

<sup>3</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

<sup>4</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>5</sup> CEQA Guidelines, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

<sup>6</sup> Pub. Resources Code, § 21005, subd. (a).

<sup>7</sup> City of Commerce, “DRAFT Transportation Impact Study for The Citadel and 10-Acre Project Commerce, California, January 2019,” available at <http://www.ci.commerce.ca.us/DocumentCenter/View/4464>, last viewed March 11, 2019.

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- Appendix D, a geotechnical study provided by GPI Geotechnical, is completely missing from the DEIR and is not provided on the City's website;
- the Transportation Impact Study is marked "DRAFT;"<sup>8</sup>
- Appendix E of the Transportation Impact Study states that information is "to be provided," indicating that this section is not yet complete;<sup>9</sup>
- Appendix A is variously labelled Air Quality Worksheets, Traffic Counts,<sup>10</sup> and as containing the Notice of Preparation ("NOP"), Initial Study, and Comment letters on the NOP;<sup>11</sup>
- Appendix B is variously labelled as the Air Quality Study<sup>12</sup> and Noise Worksheets;<sup>13</sup>
- the document provides internally inconsistent publication dates: the cover of the document is dated "February 14, 2019," while page 7 states that the DEIR will be circulated "for a public review period beginning February 7, 2019 and ending March 22, 2019" indicating that the document was published on February 7, 2019;<sup>14</sup> and

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<sup>8</sup> See <http://www.ci.commerce.ca.us/DocumentCenter/View/4464>, last viewed March 12, 2019.

<sup>9</sup> See Draft EIR, p. 4, available at <http://www.ci.commerce.ca.us/DocumentCenter/View/4464> (Table of Contents).

<sup>10</sup> Compare <http://www.ci.commerce.ca.us/DocumentCenter/View/4465> (Appendix A: Traffic Counts) with <http://www.ci.commerce.ca.us/DocumentCenter/View/4463> (Appendix A: Air Quality Worksheets).

<sup>11</sup> Draft EIR, p. 34, footnote 28, available at <http://ca-commerce.civicplus.com/DocumentCenter/View/4453>, last viewed March 11, 2019.

<sup>12</sup> Compare Draft EIR, p. 48, <http://ca-commerce.civicplus.com/DocumentCenter/View/4453> ("The air quality analysis worksheets are provided in Appendix B") with Draft EIR, p. 3 <http://www.ci.commerce.ca.us/DocumentCenter/View/4463> ("Appendix B: Noise Worksheets" and providing noise data).

<sup>13</sup> Compare <http://www.ci.commerce.ca.us/DocumentCenter/View/4463> with <http://ca-commerce.civicplus.com/DocumentCenter/View/4453>, last viewed March 11, 2019.

<sup>14</sup> DEIR, cover page, p. 7, available at <http://ca-commerce.civicplus.com/DocumentCenter/View/4453>, last viewed March 11, 2019.

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- the publication and public review dates are externally inconsistent with the dates published by the OPR; State Clearinghouse records clearly state that the document was available for public review on February 19, 2019 and the comment period ends on April 4, 2019 (not March 22, 2019).<sup>15</sup>

These are only a few examples of the document's numerous inconsistencies and errors. Such errors render a coherent review and discussion of the document's contents all but impossible and to a significant extent call into question its integrity and accuracy. The public should not be left to speculate as to the nature, type, and extent of the document's errors, and how such errors may impact the analysis presented.

The fact that the DEIR is still missing an appendix is especially significant. Section 15147 of the CEQA Guidelines sets the rule on technical detail as follows:

The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through ***inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination*** and shall be submitted to all clearinghouses which assist in public review.<sup>16</sup>

That is, under CEQA an agency may avoid inclusion of technical details in a DEIR only if it properly includes them as appendices to the main body of the DEIR, and makes them "readily available" to the public throughout the public review period.

On or about February 19, 2019, the City relayed in its Notice of Completion to OPR that the Project's Draft EIR was available for public review and comment. Although Appendices A to D are referenced in the Draft EIR, on March 5, 2019 (14 days after the Draft EIR was released), no appendices were published on the City's website,

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<sup>15</sup> Office of Public Research, SCH No. 2016091094, Citadel Outlets & 10-Acre Project, Draft EIR Notice of Completion.

<sup>16</sup> CEQA Guidelines, § 15147, emphasis added.

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where environmental review documents for current projects are indexed and provided to the public.<sup>17</sup>

On March 7, 2019, we submitted a Request for Immediate Access to all documents referenced in the Draft EIR, including appendices. *Only then* did the City provide *some* of the appendices on its website. The site now contains links to the Draft EIR; Appendices A to C; the Transportation Impact Study; the Transportation Impact Study Appendices; and the Notice of Preparation and Initial Study.<sup>18</sup> However, to date, *Appendix D is still missing* from the City's website.<sup>19</sup>

The 45-day public review and comment period on the Draft EIR is the most significant, statutorily provided period which affords the public the opportunity to meaningfully review and comment on the proposed Project, its impacts, mitigation measures and alternatives.<sup>20</sup> The need for public disclosure is so great that courts have repeatedly rejected EIRs which contain similar errors and inconsistencies, stating that “[o]nly through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the ‘no project’ alternative) and weigh other alternatives in the balance.”<sup>21</sup>

Nor can the City rely on other parties, such as the State Clearinghouse or a private contractor, to provide the public with finalized environmental review documents, in lieu of the City's failure to do so. CEQA and the Guidelines make clear that a Draft EIR is the lead agency's document (the City). While the lead agency may contract with another party to prepare a draft EIR, the obligation to review, edit, revise

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<sup>17</sup> See City of Commerce, Public Works & Development Services, Planning Dept., Planning Environmental Review Documents, <http://www.ci.commerce.ca.us/index.aspx?NID=357>.

<sup>18</sup> See City of Commerce, Public Works & Development Services, Planning Dept., Planning Environmental Review Documents, <http://www.ci.commerce.ca.us/index.aspx?NID=357>.

<sup>19</sup> See City of Commerce, Public Works & Development Services, Planning Dept., Planning Environmental Review Documents, <http://www.ci.commerce.ca.us/index.aspx?NID=357>.

<sup>20</sup> See generally, Pub. Resources Code, § 21091 (public review of draft EIRs); CEQA Guidelines, §§ 15087 (public review of a draft EIR); 15088 (evaluation of and response to comments).

<sup>21</sup> E.g. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192–193 (inaccurate, inconsistent project description renders EIR inadequate); accord *Washoe Meadows Community v. Dept. of Parks & Recreation* (2017) 17 Cal.App.5th 277, 287.

and publicize the document remains solely with the lead agency.<sup>22</sup> The CEQA Guidelines state, “[b]efore using a draft prepared by another person, the lead agency shall subject the draft to agency’s own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency;<sup>23</sup> the “lead agency” issues the public Notice of Availability of a Draft EIR;<sup>24</sup> and after publication, the “lead agency” evaluates and responds to comments.<sup>25</sup>

We note that the multiple errors and omissions in the DEIR were pointed out to the City in both phone calls and email correspondence with the City planner, Manuel Acosta. However, even though Mr. Acosta stated he is now also observing errors in the document which his department flagged for correction by the environmental consultant prior to the publication of the *finalized* DEIR, the City has not withdrawn the DEIR and published a finalized and corrected version.

By publishing an inaccurate, incomplete, administrative draft, rather than a finalized Draft EIR, the City has, in effect, failed to circulate a Draft EIR at all, as CEQA requires. Continued reliance on such a document frustrates CEQA’s mandate that the agency must make a good-faith effort to describe a project and to disclose, analyze and mitigate its impacts. Consequently, the City must withdraw this administrative draft document, and circulate a final and complete Draft EIR for public review and comment, with a comment period that reflects the revised publication date.

## **2. The City Must Extend the Comment Period Due to Its Failure to Provide Appendices and Documents Referenced in the Draft EIR.**

Even if the document was an accurate, complete and final version of the Draft EIR (which it is not), the City must extend the public review and comment period by at least 45 days from the day on which it provides *all* of the appendices and the documents referenced in the Draft EIR, as required by CEQA.

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<sup>22</sup> CEQA Guidelines, § 15084, subd. (a) (document may be drafted by outside party under contract to the lead agency).

<sup>23</sup> CEQA Guidelines, § 15084, subd. (e), emphasis added.

<sup>24</sup> CEQA Guidelines, § 15087, subd. (a), emphasis added.

<sup>25</sup> CEQA Guidelines, § 15088, emphasis added.



Public Resources Code, section 21092, subdivision (b)(1), requires that “all documents referenced in the draft environmental impact report or negative declaration” and those “incorporated by reference” be available for review and “readily accessible” during the entire comment period.<sup>26</sup> Accordingly, the City must extend the comment period, as it has failed so far to make the documents referenced in the DEIR available for public review.

First, as explained above, the City failed to make all appendices available to the public for the entirety of the comment period, and continues not to do so. Appendix D, which is still missing, contains a geotechnical study prepared by GPI Geotechnical. Appendix D is critical to the public’s understanding of the City’s analysis of impacts to Hydrology and Water Quality, with regard to infiltration testing and potential mitigation measures (biofiltration/retention areas).<sup>27</sup>

Specifically, without Appendix D, the public is unable to analyze the veracity and accuracy of GPI Geotechnical’s study methodology and conclusions, and whether infiltration and the use of biofiltration/retention areas is in fact, “not a viable treatment method for this site,” as claimed.<sup>28</sup> The fact that the City provided the other appendices more than two weeks after the DEIR was published is in and of itself a sufficient basis for an extension of the public review period.

Second, the City has failed to provide *any* documents referenced or relied upon in the DEIR *beyond* the appendices, as required under CEQA. As mentioned above, in response to our March 7, 2019 Request for Immediate Access to all documents referenced in the Draft EIR, the City made some of the appendices available on its website. The City, however, continues to fail to make available *any* other documents referenced or relied upon in the DEIR. These documents include, but are not limited to, the documents listed in the DEIR, Section 6.2, “References.”

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<sup>26</sup> Pub. Resources Code, § 21092, subd. (b)(1); CEQA Guidelines, § 15087, subd. (c)(5).

<sup>27</sup> DEIR, p. 97 (emphasis added):

Based on infiltration testing by the geotechnical engineer, infiltration is infeasible for the project site due to unfavorable infiltration test result and soil stratigraphy per infiltration testing conducted by GPI Geotechnical (see **Appendix D**). The infiltration rate for the project site is 0.2 inches/hour which is less than the minimum required infiltration rate of 0.3 inches/hour according to the LID manual, and is therefore not a viable treatment method for this site.

<sup>28</sup> DEIR, p. 97.



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The documents referenced in the DEIR are particularly relevant to CREED LA's, and the public's, review of the Draft EIR's analysis of hazardous materials, air quality, hydrology and water quality, and noise impacts, where the Draft EIR identified potentially significant impacts and mitigation measures.<sup>29</sup> Without access to these documents, CREED LA members and other members of the public are precluded from having a meaningful opportunity to comment on the Draft EIR.

For example, the description of the environmental setting in the Hazards and Hazardous Materials impacts section relies on a number of Environmental Site Assessments (ESAs), including an April 2007 Phase I ESA Report prepared by Block Environmental for Area 1 and a Phase 1 ESA prepared by Partner Engineering and Science, Inc. for Area 2. These documents, as well as any other documents relied upon or referenced in the DEIR, must be made available to the public.<sup>30</sup>

The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the CEQA review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.<sup>31</sup> It is also well settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.<sup>32</sup> By failing to make all documents referenced in the Draft EIR "readily accessible" during the whole of the comment period, and by failing to properly respond to our request for all documents referenced in the DEIR, the City violated the procedural mandates of CEQA, to the detriment of those members of the public who wish to meaningfully review and comment on the Draft EIR.

Accordingly, the City must extend the public review and comment period by 45 days from the date that the required documents are made available to the public.

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<sup>29</sup> DEIR, p. 9.

<sup>30</sup> DEIR, pp. 83-84.

<sup>31</sup> *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

<sup>32</sup> *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 ("Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.").

### 3. Conclusion

The Draft EIR circulated by the City for public review and comment is an unfinalized, uncorrected administrative draft DEIR. As an uncorrected proof, the decision-makers and the public cannot rely on the document to accurately disclose, analyze, and mitigate the Project's impacts, in violation of CEQA. The City must withdraw this document, and reissue a final, corrected Draft EIR for public review and comment, with a new and updated comment period.

Additionally, the City has failed to provide the appendices and references cited within the Draft EIR for the entirety of the comment period (or at all). The City must make these documents available, and extend the public review and comment period by a full 45 days from the date on which it makes all of the documents available.

Due to the short timeline and the serious flaws pointed out in this letter, we would appreciate your prompt attention and response to this matter.

Sincerely,



Sara Dudley

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