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VIA U.S. MAIL & E-MAIL

February 9, 2021

Los Angeles City Council
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RE: City Council Agenda Item Nos. 8 & 9: Times Mirror Project (121, 145, 147 S. Spring Street; 100, 102, 106, 108, 110, 118, 120, 124, 126, 128, 130, 140, 142 S. Broadway; 202, 212, 214, 220, 224, 228, 230, 234 W. 1st Street; 205, 211, 221 W. 2nd Street

Dear Honorable Councilmembers,

On behalf of the **Southwest Regional Council of Carpenters** (“**Commenter**” or “**Carpenters**”), my Office is submitting these comments on the City of Los Angeles’ (“**City**” or “**Lead Agency**”) Final Environmental Impact Report (“**FEIR**”) (SCH No. 2017061083), Vesting Tentative Tract Map, Haul Route, Transfer of Floor Area Rights and Master Conditional Use for the Times Mirror Square Project (“**Project**”).

The Project proposes to rehabilitate the Times, Plant, and Mirror Buildings and develop a 1,127 residential units and approximately 34,572 square feet of commercial space among the 37-story “North Tower” and 53-story “South” Tower on 3.6 acres.

These Comments respond to Exhibit B of “Appeal Response: CF 20-1080, CF 20-1093” prepared by the Planning Staff dated January 13, 2021 (hereinafter referred to simply as “**Appeal Response**”).

The Southwest Carpenters is a labor union representing 50,000 union carpenters in six states and has a strong interest in well ordered land use planning and addressing the environmental impacts of development projects. Individual members of the Southwest Carpenters live, work and recreate in the City and surrounding communities and would be directly affected by the Project’s environmental impacts.

Commenters expressly reserve the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

Commenters expressly reserve the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

Commenters incorporate by reference all comments raising issues regarding the EIR submitted prior to certification of the EIR for the Project. *Citizens for Clean Energy v. City of Woodland* (2014) 225 Cal. App. 4th 173, 191 (finding that any party who has objected to the Project’s environmental documentation may assert any issue timely raised by other parties).

Moreover, Commenters request that the City provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act (“**CEQA**”), Cal Public Resources Code (“**PRC**”) § 21000 *et seq*, and the California Planning and Zoning Law (“**Planning and Zoning Law**”), Cal. Gov’t Code §§ 65000–65010. California Public Resources Code Sections 21092.2, and 21167(f) and Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency’s governing body.

The City should seriously consider proposing that the Applicant provide additional community benefits such as requiring local hire and use of a skilled and trained workforce to build the Project. The City should require the use of workers who have graduated from a Joint Labor Management apprenticeship training program approved by the State of California, or have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state approved apprenticeship training program or who are registered apprentices in an apprenticeship training program approved by the State of California.

Community benefits such as local hire and skilled and trained workforce requirements can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain

percentage of workers reside within 10 miles or less of the Project Site can reduce the length of vendor trips, reduce greenhouse gas emissions and providing localized economic benefits. Skilled and trained workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the UC Berkeley Center for Labor Research and Education concluded:

. . . labor should be considered an investment rather than a cost – and investments in growing, diversifying, and upskilling California’s workforce can positively affect returns on climate mitigation efforts. In other words, well trained workers are key to delivering emissions reductions and moving California closer to its climate targets.¹

The City should also require the Project to be built to standards exceeding the current 2019 California Green Building Code and 2020 County of Los Angeles Green Building Standards Code to mitigate the Project’s environmental impacts and to advance progress towards the State of California’s environmental goals

I. THE CITY FAILS TO ADEQUATELY RESPOND TO THE DEFICIENCIES IN THE PROJECT AND THE DEIR

A. The City’s Previous Appeal Response Sidesteps the Community Benefits Request

In the Commenters’ December 2, 2020 letter, Commenters requested that the City should seriously consider proposing that the Applicant provide additional community benefits such as requiring local hire and use of a skilled and trained workforce to build the Project. The City should require the use of workers who have graduated from a Joint Labor Management apprenticeship training program approved by the State of California, or have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state approved apprenticeship training program or who are registered apprentices in an apprenticeship training program approved by the State of California.

In response, the City fails to indicate whether the City would consider requiring local hire. Instead, the City states a non-response that the Applicant would be required to

¹ California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, available at <https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf>

make a Public Benefits Payment, which would be devoted to affordable housing, recreation and parks and historic preservation.

As a result, the City failed to provide a meaningful response to Commenters' concerns.

B. The City's Response Regarding Applicable California Green Building Code Standards is Wrong

Commenters also previously noted that the City should require the Project to be built to standards exceeding the applicable California Green Building Code at the time of building permit application to mitigate the Project's environmental impacts and to advance progress towards the State of California's environmental goals. 24 Cal. Code of Regulations § 101.9 ("standards approved by the California Building Standards Commission that are effective at the time an application for a building permit is submitted shall apply")

The City responded by stating that "the Project would not result in any significant impacts that would be addressed by the requested measure (i.e., operational air quality, greenhouse gas emissions, or energy) and as a result, the "measure" is not warranted. Appeal Response, Exh. B, p. 1. However, the City's wrong. The DEIR actually found significant operational air quality impacts which was required to be mitigated. As such, to say that the City's reasoning for rejecting that the City require the Project to be built to standards exceeding the California Green Building Code Standards does not hold.

C. The City Fails to Adequately Respond to Concerns that the EIR Provides Narrow Objectives that Curtailed its Alternatives Analysis

In Commenter's previously submitted comment letter dated December 2, 2020, Commenter noted that the Project objectives should not be so narrowly defined that they preclude consideration of reasonable alternatives for achieving the project's underlying purpose. *North Coast Rivers Alliance v Kawamura* (2015) 243 CA4th 647, 668. Inconsistency with only some project objectives may not be an appropriate basis to eliminate impact-reducing project alternatives from analysis in an EIR. See 14 Cal Code Regs §15126.6(c), (f). The fact that a proposed alternative does not meet all of the Project Objectives is not an appropriate basis to eliminate impact-reducing alternatives from analysis in an EIR. 14 Cal Code Regs §15126.6(c), (f). Objectives should be based on the underlying purpose of the project, rather than the specific nature of the proposed project. *Habitat & Watershed Caretakers v City of Santa Cruz* (2013) 213 Cal. App. 4th 1277, 1299 (holding that the project objective of

implementing a settlement agreement relating to expansion of a University of California campus was too narrow and too focused on the nature of the Project).

In the Appeal Response, the City counters that the Project’s underlying purpose and primary object is “sufficiently broad,” again sidestepping Commenters’ concerns that many of the Project’s specifically listed objectives are actually extremely narrow. Appeal Response, Exh. B., p. 1.

The City’s Appeal Response ignores how the EIR provides extremely narrow and specific objectives that essentially only describe the proposed Project, rather than the purpose of the project. The unduly specific and narrow Project objectives and explanations of why they are improper are provided below:

- Objective 1: Rehabilitate and modernize the Times, Mirror, and Plant Buildings to distinguish the character of the Downtown and attract visitor interest, and to reduce vacant office space through the rehabilitation of existing offices and creation of employee amenities to generate jobs.
 - Too narrow: From the outset, this objective rules out rehabilitating or retaining the Executive building or its parking structure.
- Objective 5: Provide a full-service grocery store to serve existing and new residents and visitors in the Downtown and further activate pedestrian activity in an area that is underserved by full-service grocery stores.
 - Too narrow: Including a full-service grocery store in the list of objectives leads to the dismissal of all alternatives that would not allow for a grocery store. The purpose of the Project is a mixed-use development, not to build a grocery store.
- Objective 7: Maximize and increase high-density residential uses in Downtown Los Angeles within walking distance of jobs-rich centers, such as the Financial District and Civic Center, and a short transit ride to popular destinations such as Little Tokyo, the Arts District, Union Station, Olvera Street, Chinatown, the Downtown Markets, and the Los Angeles Convention Center, and Downtown amenities, such as Grand Park and the Los Angeles Music Center.
 - Unduly specific and narrow: Having a project objective that seeks to “maximize and increase high-density residential uses in Downtown Los Angeles” does not pertain to the purpose of the Project, which is to

provide a mixed-use development. The words “Maximize and increase density” promotes dismissal of any and all alternatives that won’t “maximize and increase high-density residential uses.”

The EIR discloses that the Project will have significant and unavoidable impacts across several disciplines, including air quality, cultural and historic resources, noise, traffic. However, the unduly narrow objectives led to the dismissal of alternatives that would alleviate such significant environmental impacts for the reason that they would not meet the Project objectives as well as the Project. Alternative 5 would avoid the Project’s significant and unavoidable impacts to historical resources, air quality impacts and construction noise impacts but the EIR dismissed it for not meeting the Project objectives “to the same extent as under the Project.” DEIR, p. V-206. As for Alternative 4, which would lessen or reduce the significant and unavoidable impacts to historical resources, air quality standards, and construction noise, was not selected because while it “would meet the Project’s underlying purpose and primary objective...it would not fully meet the Objective’s intent to provide publicly accessible open space and amenities *to the same extent* as the Project...” DEIR, p. V-166, 167.

The City must revise the Project objectives to allow for a full consideration of a reasonable range of alternatives and to prevent improper dismissal of impact-reducing alternatives from consideration or selection.

D. The FEIR Fails to Adequately Analyze and Mitigate the Project’s Historical and Cultural Aesthetic Impacts

The Project proposes to demolish historic resources, the Executive Building and the accompanying parking structure. DEIR, p. IV.A-37. The EIR admits that the entire Times Square, including the Executive Building and the parking structure, “is already considered a historic resource in this EIR.” DEIR, p. IV.C-32. While the EIR admits that the Project will have significant impacts to historic resources, the EIR curiously concludes that the Project will not have significant aesthetic impacts related to the demolition of historic resources.

The City and the Project EIR rely on Senate Bill (SB) 743 (codified under PRC Section 21099 et. seq.) to conclude that because the Project is a mixed-use residential project in a transit priority area, “aesthetic impacts” the Project might have “shall not be considered significant impacts on the environment.” DEIR, p. IV.A-1. As acknowledged by the DEIR, PRC Section 1099(d)(2)(B) also expressly state that

“aesthetic impacts do not include impacts on historical or cultural resources,” which means that despite Senate Bill 743, the City must analyze the Project’s aesthetic impacts related to historical and cultural resources. *Id.*

The City’s latest Appeal Response reiterates the same point in the November 24, 2020 Appeal Response; CF 20-1080, CF 20-1093 (“Appeal Response”) and takes a puzzling position that aesthetic impacts to historical and cultural resources are not considered to be aesthetic impacts at all. Appeal Response, Exh. B, p. 3-4. The City is simply wrong. SB 743 exempts any qualifying project’s aesthetic impacts from being considered significant impacts on the environment. The bill unambiguously excludes aesthetic impacts on historical or cultural resources from being exempt, meaning the City is required to consider aesthetic impacts on historical or cultural resources regardless of a project’s qualification under SB 743.

Moreover, the City’s claim that “impacts to historical resources were thoroughly analyzed in section IV.C, Cultural Resources” ignores the point that the EIR failed to analyze the aesthetic impacts the demolition of historic resources will have.

Thus, the City violated CEQA by failing to analyze and mitigate the Project’s historical and cultural aesthetic impacts.

E. The EIR Fails to Adequately Analyze the Significance of the Project’s Greenhouse Gas Emissions

In order for the City to determine whether a proposed project may have a potentially significant impact on greenhouse gas emissions, CEQA requires that a CEQA environmental document consider:

- (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.
- (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

CEQA Guidelines § 15064.4(b)(1 – 3).

However, as raised in Commenter’s December 2, 2020 letter, the Project’s EIR explicitly ignores CEQA’s requirement that an EIR analyze and determine significance

based in part upon “[t]he extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting,” instead only opting to analyze the Project’s consistency with statewide, regional and local plans and claiming that showing “compliance with a GHG emissions reduction plan renders” the Project’s greenhouse gas emissions to “less than significant.” DEIR at IV.E-30, 39. The Project’s limited review of the significance of the Project’s greenhouse gas emissions violates CEQA.

Based upon consistency with general non-quantitative requirements of various statewide, regional and local greenhouse gas reduction plans, the Project claims, with respect to greenhouse gas impacts, that “no mitigation measures are required,” DEIR, p. ES-32, as the Project will be designed to achieve the equivalent of USGBC LEED Silver Certification. This measure fails to go far enough.

For example, the Newhall Ranch Project, which “will feature roughly 22,000 homes on 15,000 acres” in the Santa Clarita Valley, “is expected “to be ‘net-zero,’ meaning no greenhouse gas emissions, by implementing several mitigation efforts including solar panels and open space.”² The Project should make employ all feasible efforts to meet net-zero emissions conditions.

Moreover, as explained in full by SAFER and its expert, SWAPE, the EIR failed to adequately analyze the Project’s GHG impacts by:

- (1) incorrectly relying upon CARB’s 2017 Scoping Plan, SCAG’s 2016 RTP/SCS, the City of *LA Green Plan*, and Sustainable City pLAn to determine the Project’s significance.
- (2) failing to compare the Project’s GHG emissions to the appropriate SCAQMD’s bright-light and service population efficiency thresholds.
- (3) ignoring SWAPE’s updated GHG analysis which demonstrated that the Project’s emissions significantly exceeded the applicable SAQMD bright-line and efficiency thresholds.

See October 15 SWAPE Comment Letter.

The City’s Appeal Response merely reiterates its prior response to SWAPE’s comments that the Project may utilize a qualitative threshold because the SCAQMD

² <https://www.city-journal.org/california-housing-development>

Interim Thresholds were not adopted. Appeal Response, Exh. B, p. 4. However, as laid out in SAFER’s November 3, 2020 appeal letter, the City failed to adequately respond to SWAPE’s concerns because (1) the SCAQMD Interim Thresholds are consistent with the methods of analysis that is regularly practiced in other air districts and furthers CEQA’s demand for conservative analyses to afford the fullest possible protection of the environment and (2) the City’s GHG analyses is inconsistent with the evolving standards and the EIR’S conclusion of less than significant impact is unsupported by substantial evidence. 11/3/2020 SAFER appeal letter, p. 15. Moreover, despite City’s claim to the contrary, the City failed to discuss and explain why the Project did not incorporate all of the Project-specific measures required by CARB’s 2017 Scoping Plan, SCAG’s 2016 RTP/SCS, the City of *LA Green Plan*, and Sustainable City pLAN. As a result, the City failed to establish that the Project is consistent with stated plans. *Id.*

F. The Project’s Project Design Feature AQ-1 is Unenforceable

The Project claims that it “will be designed to achieve the equivalent of the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) Silver Certification level for new buildings.” DEIR, PDF AQ-1, p. ES-11 However, the Project states only that it will provide “Preconstruction documentation that indicates the Project is designed to achieve the number of points required for LEED Silver Certification will be provided to the City prior to building permit issuance.” And will provide similar postconstruction documentation to the City to demonstrate compliance. However, this provides only limited detail on how equivalency will be ensured and does not provide for public process to ensure equivalency.

The City claims that the PDF would be enforceable by the City as conditions of approval. Appeal Response, Exh. B, p. 4. However, the City again fails to respond to the fact that only “preconstruction documentation” is required. The City also ignores Commenters’ point that postconstruction documentation should be required to enforce that PDF AQ-1 is actually implemented.

The City failed to adequately respond to Commenters’ concerns that PDF AQ-1 is unenforceable as it is currently worded.

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G. The EIR Fails to Adequately Analyze and Mitigate the Project’s Air Quality Impacts

1. *The FEIR Underestimates the Project’s Air Quality Impacts During Construction*

Commenters’ previous comments raised concerns that while the EIR relies heavily upon the majority of the existing truck fleet to be meet model year 2010 standards, recent studies have found that EPA Model Year 2007 and 2010 heavy duty engines exceed their EMFAC emission factors significantly under real world conditions.

Commenters also submitted studies conducted by CE-CERT on the in-use emissions generated by EPA Model Year 2007 and Model Year 2010 heavy-duty engines.³ The CE-CERT study concludes that heavy-duty diesel engine trucks emit in-use emissions that are up to an entire order of magnitude higher than their certification levels. However, the studies provide clear and substantial evidence demonstrating that, under typical driving conditions, EPA-certified MY2007 and MY2010 heavy-duty trucks emit NOx emissions that exceed their emission certification levels, which therefore results in NOx emissions that may exceed applicable air quality thresholds.

The City’s Appeal Response dismisses the applicability of the CE-CERT studies as they “may not be generalized to the entire heavy-duty vehicle population of that particular vocation in the state.” Appeal Response, Exh. B, p. 4. But on the same token, these studies dispute the very generalizations the City makes in requiring certain Model Year standards. By its own admission, the City should be more specific about the exact type, wear/tear, require emissions testing documentation for each truck, et cetera. Thus, the City’s rationale actually supports Commenters’ position that the EIR’s simple reliance on EPA MODEL YEAR 2007 and 2010 standards is too simplistic and actually underestimates the potentially significant air quality impacts.

³ Miller, Wayne, et. al. (September 2013). In-Use Emissions Testing and Demonstration of Retrofit Technology for Control of On-Road Heavy-Duty Engines, available at https://mk0lazerinitiat9yynj.kinstacdn.com/wp-content/uploads/2019/04/2013_AQMD_in-use_retrofit_Miller.pdf; Dixit, Poornima, et al (September 2017) Differences between emissions measures in urban driving and certification testing of heavy-duty diesel engines, available at <https://escholarship.org/uc/item/9xw9g6br#main>; Boriboonsomsin, Kanok et al (May 2017) Collection of Activity Data from On-Road Heavy-Duty Diesel Vehicles, available at <https://escholarship.org/uc/item/35b9048d#main>; Durbin, Tom et al (March 2018) Collection of Tractor-Trailer Activity Data, available at <https://escholarship.org/uc/item/60s573rb>

As a result, the EIR underestimates the Project’s air quality impacts during construction and the City must revise the EIR to adequately analyze and mitigate the impacts.

2. *The Project Does Not Mitigate Its Significant and Unavoidable Air Quality Impacts to the Extent Feasible*

The South Coast Air Quality Management District submitted comments on the DEIR on May 16, 2019 noting that “The Proposed Project will result in significant and unavoidable air quality impacts from NO_x emissions during construction. Specifically, the Lead Agency states that ‘NO_x exceedance results primarily from on-site construction equipment, and on-road hauling and concrete truck emission [...]’” (FEIR, p. 2-18). The South Coast AQMD then comments that the project should:

- “Require the use of zero-emissions (ZE) or near-zero emission (NZE) on-road haul trucks (e.g., material delivery trucks and soil import/export) such as heavy-duty trucks with natural gas engines that meet the CARB’s adopted optional NO_x emissions standard at 0.02 grams per brake horsepower-hour (g/bhp-hr).” (FEIR, p. 2-18.); and,
- “require that construction vendors, contractors, and/or haul truck operators commit to using 2010 model year or newer engines that meet CARB’s 201013 engine emissions standards at 0.01 g/bhp-hr of particulate matter (PM) and 0.20 g/bhp-hr of NO_x emissions or newer, cleaner trucks.” (FEIR, p. 2-18.)

The Project’s response to comments states that: “the use of ZE and NZE trucks is not feasible at this time for utilization by the Project. . . there would not be enough commercially available ZE and NZE concrete truck fleets and/or infrastructure to accommodate the use of ZE and NZE technology for the Project.” (FEIR, p. 2-20.) However, even if we were to accept the Project’s questionable claim that sufficient vehicles to meet the Project’s full needs for concrete trucks or heavy vehicles in general are not available (for which no analysis or supporting evidence is provided), this does not support the argument that as a result the project should use no ZE or NZE vehicles. The project should be required to require use of any ZE or NZE vehicles that are available, and otherwise provide evidence documenting that ZE or

NZE vehicles were not available in numbers sufficient to meet Project needs, or at all, during construction.

The Project's comments further state that:

The Lead Agency does not believe that a mitigation measure requiring 2010 model year or newer engines is necessary because this is already required through the CARB 2008 Truck and Bus Regulation. As discussed on page IV.B-5 in Section IV.B, Air Quality, of the Draft EIR, "In 2008, CARB approved the Truck and Bus regulation to reduce NOX, PM10, and PM2.5 emissions from existing diesel vehicles operating in California (13 CCR, Section 2025)." The regulation requires that trucks with a gross vehicle weight rating greater than 26,000 pounds, which includes heavy-duty trucks that would be used during Project construction, meet 2010 engine standards, or better. The regulation is phased over 8 years, starting in 2015 and would be fully implemented by 2023, meaning that all trucks operating in the State subject to this option would meet or exceed the 2010 engine emission standards for NOX and diesel particulate matter by 2023. Truck fleet operators are required to report compliance with the regulation in accordance with CARB's reporting procedures for the Truck Regulation Upload, Compliance and Reporting System (TRUCRS). As the Project would undergo construction from 2019 to 2023, the truck fleets that would be used during Project construction have already begun incorporating 2010 model or newer engines per the regulation. Based on the CARB on-road vehicle emissions factor model (EMFAC), upwards of approximately 75 percent of heavy-heavy-duty trucks (HHD'T) would be 2010 model year or newer during the initial years of the Project's construction time period (i.e., years 2020, 2021, and 2022, and 2023).

FEIR, pp. 2-21 to 2-22. The Appeal Response reiterates these very same points and cites to prior responses. Appeal Response, Exh. B, pp. 5-6.

As the project points out, approximately 25 percent of heavy-duty trucks will not meet the 2010 engine standards during the Project's construction timeline. The Project should incorporate a requirement that all such vehicles meet the 2010 engine standard or be replaced by ZE or NZE vehicles.

3. *The City Improperly Ignored SWAPE’s Comments that the EIR Failed to Adequately Analyze and Mitigate the Project’s Air Quality,*

According to SWAPE (October 15, 2019, May 4, 2020, July 1, 2020 letters), the EIR fails to adequately analyze and mitigate the Project’s air quality impacts, quickly summarized below:

- The City’s air model in the EIR utilized unsubstantiated input parameters to estimate the Project’s emissions. The DEIR’s CalEEMod model included unsubstantiated changes to the fuel type of two pieces of off-road equipment, from diesel to electrical, and unsubstantiated changes to indoor and outdoor water use rates.
- The EIR inadequately evaluated the Project’s Diesel Particulate Matter health risk emissions because the City’s health risk assessments failed to adequately evaluate the Project’s health risk impacts.

See SWAPE Comments dated October 15, 2019.

The City’s current Appeal Response, as well as its November 24, 2020 Appeal Response, rely on the City’s previous responses to SWAPE’s concerns. Appeal Response, Exh. B, p. 6.. First, as explained in full by SWAPE, the City failed to adequately justify these unsubstantiated changes to the CalEEMod model. October 15, 2019 SWAPE Comments, p. 2-3.

Next, the City claims that 2015 OEHHA Guidance does not impose requirements for HRAs for the Project because it was intended to provide HRA procedures with guidance to use in the Air Toxics Hot Spots Program. But as SWAPE has previously responded to in its October 15, 2020 Comments, the Project’s reliance on 2003 OEHHA guidance is incorrect for several reasons and the 2015 OEHHA guidance is more appropriate to be used for the Project. October 15, 2019 SWAPE Comments, p. 3; also see November 3, 2020 SAFER Appeal Letter, p. 14.

The City has failed to adequately address the concerns raised by SWAPE. The City must revise the EIR to adequately analyze the air quality impacts as suggested by SWAPE and its analysis.

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H. The EIR Fails to Adequately Analyze and Mitigate the Project’s Impacts to Biological Resources

According to ecologist and expert Dr. Shawn Smallwood, the City failed to adequately analyze the Project’s impacts on biological resources, especially the potentially significant impact on birds resulting from collisions with the Project’s clear windows. See October 13, 2019 Smallwood Comments. In his Comments, Dr. Smallwood established, with evidence, that the Project would cause 2,310 bird deaths per year; 43 special-status species of birds occur near the Project site, 14 of which have been seen near the Project site and 15 of which have been known to collide with windows; and no surveys by wildlife biologists have been performed for the EIR. October 13, 2019 Smallwood Comments. Dr. Smallwood also cited to many sources to support his scientific prediction of the Project’s impacts of bird collisions. *Id.* Dr. Smallwood’s full analysis is contained in his October 13, 2019 Comments and his May 25, 2020 responses to the City.

The City’s current Appeal response reiterates its earlier November 23, 2020 Appeal Response, which again relies on previous responses and states that the Project would not have a significant impact to biological resources and that EIR provides a sufficient and complete analysis. Appeal Response, Exh. B, p. 6. As previously responded to in full by Dr. Smallwood (May 25, 2020 Smallwood Comment, pp. 1-11), the City merely critiqued Dr. Smallwood’s analysis rather than conduct its own analysis of the potentially significant impacts of bird fatalities.

Despite the substantial evidence presented by Dr. Smallwood, the City failed to analyze the Project’s potentially significant impacts to biological resources.

I. The EIR Fails to Adequately Analyze and Mitigate the Project’s Traffic Impacts

Civil traffic engineer and expert, Dan Smith, has submitted his concerns regarding the Project’s traffic impacts on October 11, 2019 and May 21, 2020. Rather than analyzing and studying the issues raised by Mr. Smith, the City has lodged critiques to his comments. According to Mr. Smith, the City:

- Has made an error by applying a 25 percent deduction in the Project’s motor vehicle trip generation in the 2017 Existing + Project analysis based on assumed presence of a future rail transit station that did not exist in 2017.

- Improperly assumed that an increase of 10 percent in retail and restaurant trips and increase of 5 percent in office and retail trips reflects “TNC” (Transportation Network Companies like Uber) without evidence

Mr. Smith explains his reasoning in much more detail in his May 21, 2020 Comments. In response, the City’s Appeal Response again merely cites to the City’s prior responses and claims that the DEIR provides a more conservative analysis than if the TNCs were incorporated in the analysis. Appeal Response, Exh. B, p. 6. However, without more, the issues raised by Mr. Smith remain unresolved.

According to Mr. Smith’s analysis, the EIR fails to adequately analyze and mitigate the Project’s significant traffic impacts.

J. The EIR Fails to Adequately Analyze and Mitigate the Project’s Potentially Significant Indoor Air Quality Impacts

According to Certified Industrial Hygienist and expert Francis Offermann, PE CIH, the EIR failed to analyze and mitigate the Project’s potentially significant health impacts on future residents and employees from formaldehyde emissions that will be emitted by finishing materials used to construct interiors of the residential units and office buildings. See April 22, 2020 Offermann Comments and May 26, 2020 response to the City.

Mr. Offermann predicted that the Project would pose a significant cancer risk to residents and employees of the Project by calculating that residents’ continuous exposure represents a cancer risk of 112 per million, 11 times greater than SCAQMD’s CEQA cancer risk threshold of 10 per million and for the employees of the commercial spaces of the Project, the expected exposure represents a cancer risk of 16.4 per million, which is 1.64 times the SCAQMD’s CEQA cancer risk threshold of 10 per million. April 22, 2020 Offermann Comments, pp. 2-3.

The City’s Appeal Response again merely cites to its previous responses and concludes that the Project will not have significant indoor air quality impact because the Project would be built to “newer Title 24 standards which are intended to protect public health for all regulated products newly installed in the Project uses.” Appeal Response, Exh. B, p. 6-7. However, as pointed out by Mr. Offermann in his May 26, 2020 Response, Title 24 does not speak at all about formaldehyde emissions from composite wood products and therefore, any purported compliance with Title 24 does

not ensure safe practices and healthy indoor air. May 26, 2020 Offermann Response, p. 9. A full response to the City’s previous comments are provided by Mr. Offermann in his April 22, 2020 Comments. In short, rather than analyzing the potentially significant indoor air quality impacts, the City chose to critique Mr. Offermann’s comments and dismissed them.

Thus, the EIR failed to adequately analyze and mitigate the Project’s potentially significant indoor air quality impacts to future residents and employees.

K. Due to the COVID-19 Crisis, the City Must Adopt a Mandatory Finding of Significance that the Project May Cause a Substantial Adverse Effect on Human Beings and Mitigate COVID-19 Impacts

CEQA requires that an agency make a finding of significance when a Project may cause a significant adverse effect on human beings. PRC § 21083(b)(3); CEQA Guidelines § 15065(a)(4).

Public health risks related to construction work requires a mandatory finding of significance under CEQA. Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupational Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.

The City’s Appeal Response claims COVID is not a CEQA issue because “[e]ffects of the environment on a project are not subject to CEQA review.” Appeal Response, Exb. B, p. 7. But this characterization of COVID is wrong. COVID is not the “environment” but what can proliferate and adversely affect the health of the construction workers especially when workers are brought on site in close contact for the Project. Thus, the Project can have a substantial adverse effect on human beings as a result.

As provided in Commenters’ previous letter, SWRCC recommends that the Lead Agency adopt additional CEQA mitigation measures to mitigate public health risks from the Project’s construction activities. SWRCC requests that the Lead Agency require safe on-site construction work practices as well as training and certification for any construction workers on the Project Site, the details of which can be found in Commenters’ December 2, 2020 letter.

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L. CEQA Requires Revision and Recirculation of an Environmental Impact Report When Substantial Changes or New Information Comes to Light

Section 21092.1 of the California Public Resources Code requires that “[w]hen significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 ... but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report” in order to give the public a chance to review and comment upon the information. CEQA Guidelines § 15088.5.

Significant new information includes “changes in the project or environmental setting as well as additional data or other information” that “deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative).” CEQA Guidelines § 15088.5(a). Examples of significant new information requiring recirculation include “new significant environmental impacts from the project or from a new mitigation measure,” “substantial increase in the severity of an environmental impact,” “feasible project alternative or mitigation measure considerably different from others previously analyzed” as well as when “the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” *Id.*

An agency has an obligation to recirculate an environmental impact report for public notice and comment due to “significant new information” regardless of whether the agency opts to include it in a project’s environmental impact report. *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95 [finding that in light of a new expert report disclosing potentially significant impacts to groundwater supply “the EIR should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information.”]. If significant new information was brought to the attention of an agency prior to certification, an agency is required to revise and recirculate that information as part of the environmental impact report.

Based on the information contained in this letter and Commenters’ December 2, 2020 letter, and as a result of the City’s failure to adequately respond to and resolve these issues, the City must revise and recirculate the FEIR for public comment.

II. THE PROJECT DOES NOT PROVIDE ADEQUATE AFFORDABLE HOUSING FOR NON-MARKET RATE INCOME CATEGORIES

Commenters previously raised concerns that the Project’s proposed construction of 1,127 residential units with no set aside for affordable housing will only exacerbate the City’s affordability crisis. Commenter requested that the City require that a significant portion of the Project’s housing units be allocated towards workforce, moderate, low and very low-income households.

The City claims affordable housing is a social and economic issue that is not covered by CEQA. Appeal Response, Exh. B, p. 7. However, the failure to require affordable housing will exacerbate the homelessness crisis in Los Angeles and cause an adverse effect on human beings. PRC § 21083(b)(3); CEQA Guidelines § 15065(a)(4). The City must consider this as a CEQA issue that ultimately affects human beings and the environment around us.

During a time when the City is battling a severe homelessness crisis, it is inexcusable for the City to feign ignorance to the need for affordable housing.

While the City later decided to require 24 moderate and 10 low income units available, these units make up less than 3% of the total proposed units of 1,127. Moreover, a pitiful .0088% of the Project units will be set aside for low income units and a mere drop in the bucket. Rather than accepting last minute concessions of affordable housing from Applicant, the City must analyze how much affordable housing the Project is required to carry based on what the amount of affordable housing the City needs.

In addition, CEQA requires that the City discuss a Project’s consistency with regional plans, including regional housing plans. CEQA Guidelines section 15125(d) requires that an environmental impact report “discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. *See also Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal. App. 5th 467, 543.

The City must analyze the Project’s consistency with the state’s housing goals. In particular, the City should address its affordable housing deficit under the City’s General Plan – Housing Element. State Housing Element Law requires SCAG to prepare a Regional Housing Needs Assessment (RHNA) every eight years to identify existing and future housing needs.

The EIR should thoroughly evaluate the consistency of this Project with the City’s General Plan, City’s Regional Housing Needs Assessment targets, Sustainable Community Strategy and Regional Transportation Plan.

III. THE CITY HAS NOT PRESENTED SUBSTANTIAL EVIDENCE OR FINDINGS OF THE PROJECT’S COMPLIANCE WITH THE CITY’S MUNICIPAL CODE CONCERNING THE SALE OR DISPENSING OF ALCOHOLIC BEVERAGES

The City’s Municipal Code requires a conditional use permit (“CUP” or “Conditional Use”) for the sale or dispensing of alcoholic beverages, including beer and wine. LAMC § 12.24(W).

The City is required to deny a CUP unless 1) “the project will enhance the built environment in the surrounding neighborhood,” 2) “the project’s location, size, height, operations and other significant features . . . [are] compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare and safety” and 3) “the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan.”

In addition , the Municipal Code requires the City to deny a CUP if the sale or dispensing of alcohol will 1) “adversely affect the welfare of the pertinent community,” 2) “result in an undue concentration of premises for the sale or dispensing for consideration of alcoholic beverages, . . . in the area of the City involves, giving consideration to applicable State laws and to the California Department of Alcoholic Beverage Control’s guidelines for undue concentration . . .” and 3) will not detrimentally affect nearby residentially zoned communities in the area of the City involved.” LAMC § 12.24(W)(1)(a).

The City previously found that “the number of existing on-site licenses within the census tract where the Project Site is located exceeds ABC guidelines.” CPC-2016-4675-TDR-VCU-MCUP, August 11, 2020 Determination, p. F-27. Then the City quickly concludes, without adequate evidence, that such “exceedance” does not result in undue concentration because the proposed restaurant, retail, and grocery store uses are “desirable uses” and will not “negatively affect the area.” However, these are conclusions without any fact and with so many liquor licenses existing near the Project Site, the City’s finding that the granting of the alcohol sale license “will not

result in an undue concentration of premises for the sale or dispensing for consideration for alcoholic beverages” is unsupported.

IV. THE CITY FAILED TO ADEQUATELY SUPPORT THEIR TFAR FINDINGS

The City failed to adequately support their TFAR (Transfer of Floor Area Rights) findings and the Final EIR fails to analyze the Project’s consistency with the state’s housing goals for the City of Los Angeles.

For example, the City’s TFAR findings fail to provide an analysis of the accuracy of the City’s required public benefit payment. The City’s findings fail to review or explain whether and how the City’s calculations for the public benefit payment are based upon accurate assessments of the Project’s estimated valuation and square footage.

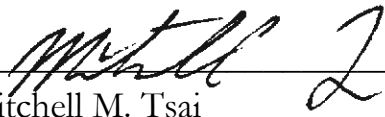
This cursory statement, along with inadequate findings, do not meet the requirements of LAMC Section 14.5.6 B.2(a) and 4(a) to warrant the approval of the transfer of TFAR rights.

V. CONCLUSION

Commenters request that the City deny the Project’s proposed tentative tract map, master conditional use permit and order the revision and recirculation of the Project’s environmental impact report to address the aforementioned concerns.

Please contact my Office if you have any questions or concerns.

Sincerely,



Mitchell M. Tsai

Attorneys for Southwest Regional
Council of Carpenters