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Via Email and U.S. Mail

Hearing Officer
c/o Jivar Afshar, Planning Assistant
City of Los Angeles
Department of City Planning
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Los Angeles, CA 90012
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Re: Agenda Item 1: Comments on the Final Environmental Impact Report – 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV-2016-3691-EIR; CPC-2016-3689-GPA-ZC-HD-MCUP-DB-SPR; VTT-74550)

Dear Hearing Officer, Ms. Afshar:

We are writing on behalf of **Coalition for Responsible Equitable Economic Development (“CREED LA”)** to provide comments on the Final Environmental Impact Report (“FEIR”) and related proposed approvals for the 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV 2016-3691-EIR; CPC-2016-3689-GPA-ZC-HD-MCUP-DB-SPR; VTT-74550) (“Project”), proposed by District Centre, LP, & District Centre-GPA, LP (collectively, “Applicant”). The Applicant seeks approval of the FEIR, as well as approvals of a Vesting Tentative Tract Map, haul route to export approximately 74,500 cubic yards of soil, General Plan amendment, vesting zone change and height district change, conditional use permit to allow the sale and dispensing of alcohol, a density bonus compliance review, and a site plan review. All approvals will be subsequently considered by the City Planning Commission on October 28, 2021.

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The Project proposes the demolition of an existing warehouse and surface parking lot, and the construction of an up-to 197,355-square-foot mixed-use building, including up to 185 live/work units, approximately 15,320 square feet of open space for residents, up to 23,380 square feet of art-production and commercial space, and associated parking facilities. The Project site is located at 668-678 S. Mateo Street and 669-679 S. Imperial Street in the Central City North community of the City of Los Angeles, and consists of eight contiguous lots associated with Assessor Parcel Number 5164-020-021.

On January 25, 2021, we submitted comments on the Project's Draft EIR ("DEIR"). However, the City failed to make all of the documents referenced or relied upon in the DEIR available for the entire public comment period, providing the last of our requested documents just three days before the close of the comment period. As a result, CREED LA was granted an additional two weeks to prepare supplemental comments, which we submitted on February 8, 2021. The FEIR now goes before a joint hearing of the Deputy Advisory Agency and a Hearing Officer. The Deputy Advisory Agency will consider the FEIR and the application for a Vesting Tentative Tract Map, as well as a proposed haul route to export approximately 74,500 cubic yards of soil from the Project site, while the Hearing Officer will take testimony on behalf of the City Planning Commission on the Project's proposed entitlements.

Based upon our review of the FEIR and the City's responses to comments on the DEIR, we conclude that the FEIR fails to comply with CEQA. Though the FEIR responds to some of our comments, it fails to address or resolve many of the major issues we raised. In addition, significant new information is included in the FEIR, necessitating the recirculation of the DEIR to allow the public to meaningfully review and comment on significant impacts or feasible mitigation measures that had previously been omitted. Moreover, the FEIR fails to adequately analyze the Project's impacts related to air quality, greenhouse gas ("GHG") emissions, cumulative impacts, noise impacts, and adverse effects on public health and safety. It also fails to propose mitigation measures capable of reducing potentially significant impacts to less than significant levels, leaving major Project impacts significant and unmitigated. Finally, as a result of these ongoing impacts, the City cannot make the findings required under State and City laws to issue the Project's land use entitlements.

We have reviewed the FEIR and its appendices with assistance from air quality expert James Clark, Ph.D., and acoustics expert Neil A. Shaw, FASA, FAES.¹ We incorporate by reference all comments included in the expert letters, as well as our earlier preliminary and supplemental comments on the DEIR.

I. STATEMENT OF INTEREST

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. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Los Angeles.

Individual members of CREED LA and its member organizations include John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias. These individuals live, work, recreate, and raise their families in the City of Los Angeles and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

In addition, CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

¹ James Clark Rebuttal Comments on FEIR, attached as **Exhibit A** (hereinafter "Clark Rebuttal Comments"); Neil Shaw Rebuttal Comments on FEIR, attached as **Exhibit B** (hereinafter "Shaw Rebuttal Comments").

II. THE ADDITION OF SIGNIFICANT NEW INFORMATION REQUIRES RECIRCULATION OF THE DEIR

CEQA requires that an agency recirculate a draft EIR for additional public comment if it adds significant new information after for the close of the public comment period on the draft EIR or if consultation with other responsible and interested agencies identifies new issues.² New information is significant if, among other things, “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project” or it demonstrates that “a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.”³ A decision not to recirculate an EIR “must be supported by substantial evidence in the administrative record.”⁴

The City, in its statement of Revisions, Clarifications, and Corrections to the DEIR, asserts that recirculation is not necessary as any “additions and corrections would not result in new significant impacts or increase the impacts of the Project.”⁵ However, the FEIR fails to acknowledge that several of its revisions are indeed, significant, and will result in impacts not previously addressed in the DEIR.

Notably, the FEIR includes new construction haul routes that were not analyzed in the DEIR. The City made a major revision from the DEIR by altering the haul routes along which approximately 74,500 cubic yards of soil will be exported during Project construction, resulting in at least 142 commercial truck trips per day passing through local neighborhoods that were not analyzed in the DEIR.

The Project’s outbound haul route was initially described in the DEIR to travel south on Mateo Street and east on E. 7th Street to the I-5. The inbound haul route was to exit the I-10 toward Santa Fe Avenue and Mateo Street, travel west down E. 8th Street, and north onto Mateo Street. The FEIR, however, contains a

² Pub. Resources Code § 21092.1; 14 C.C.R. § 15088.5.

³ 14 C.C.R. § 15088.5(a).

⁴ *Id.*, subd.(e).

⁵ Revisions, Clarifications, and Corrections to the DEIR, p. III-58.
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revised outbound haul route which now travels outbound down Imperial Street before heading east on E. 7th Street toward the I-5. The revised inbound route, meanwhile, would head east on E. 8th Street, north on Santa Fe Avenue, west on Jesse Street, and south onto Imperial Street. The FEIR also includes the addition of a new off-site truck staging area to support hauling activities on Imperial and Jesse streets.⁶

It appears the City revised the haul routes in response to comments on the DEIR from residents of the Toy Factory and Biscuit Company lofts, both located on Mateo Street where the original haul route was proposed, as well as in response to comments submitted on behalf of the Los Angeles Unified School District. Their comments expressed concerns about noise impacts and pedestrian safety along the proposed haul routes. Additionally, comments we submitted in conjunction with acoustics expert Neil Shaw indicated that the DEIR's estimated noise impacts to nearby residents along the original haul routes were likely to be considerably worse when calculated using the correct distances of the truck paths from residences, rather than the more lengthy distances inaccurately used in the DEIR to estimate noise impacts.⁷

Rather than adopt additional mitigation along the original haul routes to reduce noise impacts, the FEIR simply moved the location of the haul routes to a different neighborhood. While re-routing the haul trucks away from the original sensitive receptors will alleviate the concerns of those residents, it poses new problems for the sensitive receptors located along the new routes. The AMP Lofts, for example, are situated between Imperial Street and Santa Fe Avenue, directly in the path of the revised inbound and outbound haul routes.⁸ Though the City claims that any revisions or additions to the FEIR would not result in significant or increased Project impacts, the City has not analyzed the impacts on residents of the AMP Lofts or other neighboring uses along the new haul routes or adopted additional mitigation for the new neighborhood. The new haul routes are therefore likely to result in the same significant, unmitigated noise impacts in the AMP Lofts neighborhood as they would in the originally proposed neighborhoods. The change in haul routes is therefore new information about a change in the Project

⁶ *Id.*, p. III-2.

⁷ ABJC DEIR Comments, p. 12.

⁸ Mr. Shaw confirmed that relocation of the haul routes to Imperial Street and Santa Fe Avenue will do nothing to mitigate the noise impacts of the haul trucks—it will merely relocate the impacts along with the trucks. Shaw Rebuttal Comments, p. 2.

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description, which is likely to result in new, unmitigated noise impacts. This new information requires revisions to the EIR and recirculation for additional public comment. As-yet unaware that they are about to be made the recipients of significant noise impacts from haul trucks making 142 trips per day—about one truck every 6 minutes—for 66 days, residents of the AMP Lofts and other residences and businesses along the new haul routes would likely welcome the opportunity to review and comment on the Project’s proposed activities.

The City’s conclusory statement that “additions and corrections would not result in new significant impacts or increase the impacts of the Project” ignores these significant impacts to sensitive receptors which were not considered in the DEIR. As required by the statute, the inclusion of new information, which can include “changes in the project or environmental setting as well as additional data or other information,” calls for recirculation of the DEIR absent substantial evidence showing that recirculation is unnecessary.⁹ The City’s assertion that “the additions and corrections to the Draft EIR address typographical errors, provide minor revisions, and augment the analysis of the Draft EIR and would not result in new significant impacts or an increase in any impact already identified in the Draft EIR” is not supported by any evidence, substantial or otherwise. The DEIR must be recirculated to provide the public a meaningful opportunity to comment upon a substantial adverse effect of the Project.

III. THE FEIR STILL FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE THE PROJECT’S POTENTIALLY SIGNIFICANT IMPACTS TO NOISE, CUMULATIVE AIR QUALITY, AND RISKS TO PUBLIC HEALTH

A. The City’s Failure to Conduct a Health Risk Analysis is Contrary to Law

The FEIR continues to assert that the City is not required to analyze the human health effects of the Project’s direct or indirect air quality emissions on local sensitive receptors or future Project residents. The City’s position is contrary to law. An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the

⁹ 14 C.C.R. § 15088.5.
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finding.¹⁰ These standards apply to an EIR’s analysis of public health impacts of a project.

In *Sierra Club v. County of Fresno*, the California Supreme Court affirmed CEQA’s mandate to protect public health and safety by holding that an EIR fails as an informational document when it fails to disclose the public health impacts from air pollutants that would be generated by a development project.¹¹ In *Sierra Club*, the Supreme Court held that the EIR for the Friant Ranch Project—a 942-acre master-planned, mixed-use development with 2,500 senior residential units, 250,000 square feet of commercial space, and open space on former agricultural land in north central Fresno County—was deficient as a matter of law in its informational discussion of air quality impacts as they connect to adverse human health effects.¹² As the Court explained, “a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.”¹³ The Court concluded that the County’s EIR was inadequate for failing to disclose the nature and extent of public health impacts caused by the project’s air pollution. The EIR failed to comply with CEQA because the public, after reading the EIR, “would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”¹⁴ CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.¹⁵

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.¹⁶ Challenges to an agency’s failure to proceed in the manner required by

¹⁰ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732.

¹¹ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518–522.

¹² *Id.* at 507–508, 518–522.

¹³ *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

¹⁴ *Id.* at 518. CEQA’s statutory scheme and legislative intent also include an express mandate that agencies analyze human health impacts and determine whether the “**environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.**” (Public Resources Code § 21083(b)(3) (emphasis added).) Moreover, CEQA directs agencies to “take immediate steps to identify any critical thresholds for the **health and safety of the people** of the state and take all coordinated actions necessary to prevent such thresholds being reached.” (Public Resources Code § 21000(d) (emphasis added).)

¹⁵ *Sierra Club*, 6 Cal.5th at 518–522.

¹⁶ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.¹⁷ Courts reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."¹⁸

CREED LA's comments on the DEIR explained that the City failed to conduct a quantified health risk analysis of the Project's construction and operational emissions on local sensitive receptors. Rather than correct this error by providing a quantitative analysis in a revised EIR, the FEIR asserts that the City was not required to conduct this analysis because the Project does not qualify as an industrial project which would require a health risk analysis under SCAQMD guidance. However, it is not SCAQMD's rules that govern the scope of analysis required by CEQA, it is CEQA itself. By refusing to conduct a legally required analysis of the Project's health impacts, the FEIR ignores CEQA's clear mandate that agencies analyze human health impacts and determine whether the "environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly."¹⁹

CEQA expressly requires that an EIR discuss, inter alia, "health and safety problems caused by the physical changes" resulting from the project.²⁰ Guidance issued by the Office of Environmental Health Hazard Assessment ("OEHHA")²¹ also sets a recommended threshold for preparing an HRA of a construction period of two months or more.²² The City dismisses both CEQA's requirement and OEHHA's recommendation by insisting that "[n]either the City of Los Angeles nor the SCAQMD currently require operational emission health risk analyses for all

¹⁷ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

¹⁸ *Id.* (internal quotations omitted).

¹⁹ Pub. Resources Code § 21083(b)(3).

²⁰ 14 CCR § 15126.2(a).

²¹ OEHHA is the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. See OEHHA organization description, available at <http://oehha.ca.gov/about/program.html>.

²² See "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/hotspots2015.html ("OEHHA Guidance"), p. 8-18.

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projects in their jurisdiction.”²³ It further concludes, without providing any supporting evidence, that the Project would not result in any adverse health impacts from construction, and so does not require a construction health risk analysis. Though the DEIR conceded that “the greatest potential for TAC emissions resulting from construction of the Project would involve diesel particulate emissions associated with trucks and heavy equipment,”²⁴ it continues, within the same paragraph, to make the unsupported determination that “[g]iven the temporary and short-term construction schedule (approximately 24 months), the Project would not result in a long-term (i.e., lifetime or 30-year) exposure as a result of Project construction.”²⁵ Using this unsupported reasoning, construction projects, which by their nature are temporary, would never result in adverse impacts to air quality or public health.

The City’s conclusions that neither construction nor operation will result in significant impacts, and therefore do not warrant the preparation of a health risk analysis, are entirely unsupported. Rather, the City relies on conclusory statements and unsupported data sets: “Simply put, the Project would not involve the large-scale use of diesel-powered equipment or vehicles during operations and would, therefore, not be a source of substantial diesel particular matter (“DPM”) emissions in accordance with guidance from SCAQMD.”²⁶ A construction health risk analysis, the City asserts, is unnecessary because the DEIR provides support—in the form of unverified emissions estimates—for the conclusion that emissions of toxic air contaminants (“TACs”) will be less than significant.²⁷

The City’s response to our DEIR comments, as well as those of Dr. Clark, further attempts to justify its failure to conduct an HRA for construction and operation by distorting the guidance offered by the OEHHA in its guidelines on risk assessments of short-term projects. The City implies that, because OEHHA recommends that a 30-year exposure duration be used for health risk analyses, and because Project construction will last 24 months, or just 6.6 percent of 30 years, a health risk analysis is not necessary.²⁸ OEHHA, however, does not strictly recommend a 30-year exposure duration—9-year, 30-year, and 70-year durations

²³ Response to Comment 6-30, p. II-72.

²⁴ DEIR Section IV.A Air Quality, p. IV.A-49.

²⁵ DEIR Section IV.A Air Quality, p. IV.A-49.

²⁶ Response to Comment 6-16, p. II-57.

²⁷ DEIR Section IV.A Air Quality, p. IV.A-49–54.

²⁸ Response to Comment 6-31, p. II-75.

are all recommended to obtain data on a range of residency periods. Furthermore, while the City is correct that OEHHA does not require preparation of an HRA for short-term projects, the City ignores the legal reality that CEQA requires such an analysis. Moreover, it is clear from the OEHHA guidelines that short-term exposures may place some sensitive receptors at higher risk than longer-term exposures, prompting OEHHA to suggest consideration of a lower risk threshold for risk management of very short-term projects.²⁹ The City's conclusion that "it is not accurate to extrapolate this statement into a conclusion that all other longer construction events should be assessed" is contrary to CEQA, to OEHHA guidance, and is unsupported by any evidence in the record.³⁰

i. The City's Methodology to Determine the Necessity of a Health Risk Analysis is Unsupported by Substantial Evidence

Courts have held that an agency has discretion to select the methodology with which it analyzes an impact, provided the agency's decision to use a given methodology is supported by substantial evidence.³¹ "The fact that different inferences or conclusions could be drawn, or that different methods of gathering and compiling statistics could have been employed, is not determinative in a substantial evidence review. The issue is not whether other methods might have been used, but whether the agency relied on evidence that a 'reasonable mind might accept as sufficient to support the conclusion reached' in the EIR."³² Agencies do not need to follow the methods recommended by regulatory agencies or other interested agencies as long as the agency can show it "has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute ..."³³

Here, the City relies on a SCAQMD methodology to determine whether it is necessary at all to perform a construction or operational health risk analysis, rather than to select the method for analyzing the impact. A methodology which results in

²⁹ OEHHA Air Toxics Hot Spots Program Risk Assessment Guidelines, p. 8-18.

³⁰ Response to Comment 6-31, p. II-75.

³¹ See, e.g., *Laurel Heights Improvement Ass'n v. Regents of the Univ. of California* (1988) 47 Cal.3d 376; *North Coast Rivers Alliance v. Marin Municipal Water Dist.* (2013) 216 Cal.App.4th 614, 642-643.

³² *Id.*, p. 642.

³³ *Id.*, p. 643.

conclusions that are contrary to the legal mandates of CEQA cannot be supported by substantial evidence.

For example, the City's responses to comments state that an operational HRA need not be performed because SCAQMD requires such analyses only for facilities that include "activities that have the potential to generate high levels of DPM,"³⁴ such as truck idling and movement (truck stops or warehouse, distribution, or transit centers); ship hoteling at ports; and train idling.³⁵ As the Project does not include any of these activities, and because the City determined (without quantifying DPM emissions) that it would not be a significant source of on-site diesel emissions, the FEIR concludes that "an operational HRA is neither warranted nor required."³⁶ However, because CEQA requires that impacts, including those from operational emissions, be analyzed in an HRA, the City's methodology—which excludes certain projects from health risk analyses—is not supported by substantial evidence.

Additionally, the FEIR continues to rely on an unsupported conclusion that "the Project's cancer risk from exposure to DPM would be less than significant based on the conclusion that the Project's criteria pollutant emissions are less than significant."³⁷ As Dr. Clark explained in our DEIR comments, DPM is not a criteria pollutant. It is a TAC which must be measured separately from the Project's criteria pollutant emissions. Rather than quantify DPM emissions, the FEIR again claims that "an operational health risk assessment was not conducted for the Project because Project operations are not a substantial source of diesel particulate matter (DPM) emissions."³⁸

As in the DEIR, the FEIR relies on a localized significance threshold ("LST") analysis to support its conclusion that "nearby sensitive receptors to a project are not adversely affected by emissions from on-site construction activities that are in close proximity to nearby receptors."³⁹ However, an LST analysis is only applicable to criteria pollutants emissions from NO_x, CO, PM₁₀, and PM_{2.5}. It does not measure DPM emissions. Because an LST analysis can only be applied to criteria

³⁴ Response to Comment 6-30, p. II-72.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Response to Comment 6-16, p. II-57.

³⁸ Response to Comment 6-31, p. II-74.

³⁹ Response to Comment 6-31, p. II-76.

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air pollutants, by design, this method cannot be used to determine whether emissions from DPM will result in a significant health risk impact to nearby sensitive receptors. Therefore, any health risk impacts from exposure to TACs, such as DPM, were not considered in the LST analysis for the proposed Project, rendering the FEIR's conclusions unsupported by substantial evidence. The City's attempt to rely on its criteria pollutant analysis to conclude that DPM emissions are insignificant fails to provide any support for the DEIR's conclusion that the health risk posed by exposure to DPM is insignificant.

B. Substantial Evidence Demonstrates Potentially Significant Risks to Human Health

To demonstrate the potential health risk posed by Project construction and operation to nearby sensitive receptors, Dr. Clark prepared a simple screening-level health risk analysis, using the Bay Area Air Quality Management District's ("BAAQMD") Health Risk Calculator, which calculates the adjusted risk and hazard impacts that can be expected with farther distances from the source of emissions.⁴⁰

Dr. Clark used the DEIR's CalEEMod estimated emissions of 0.5046 lbs per day of fugitive PM_{2.5} exhaust for the Project and 0.4615 lbs per day of fugitive PM_{2.5} exhaust for the Project alternative.⁴¹ His calculations were included in his earlier comments and CREED LA's preliminary comments on the DEIR.⁴² We restate his findings here:

These emissions are equivalent to DPM emissions of 169.5 lbs per year to 184.2 lbs per year. Since the City has not attempted to assess what those impacts would be on the local community and in particular the impacts to the adjacent residences, I have prepared a screening assessment of the operational impacts reported in the CALEEMOD analyses for the project. Using the Bay Area Air Quality Management District's (BAAQMD) Health Risk Calculator, which calculates the adjusted risk and hazard impacts that can be expected with farther distances from the source of emissions, it is possible to quickly assess

⁴⁰ Clark DEIR Comments, p. 8.

⁴¹ Clark Comments, p. 8.

⁴² CREED LA DEIR Comments, p. 22.

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the impacts from the project on the adjacent neighbors. The model refines the screening values for cancer risk and PM_{2.5} concentrations found in the BAAQMD's Stationary Source Screening Analysis Tool for permitted facilities which contain diesel internal combustion engines (primary source of DPM). The model is recommended by BAAQMD to assess the impacts from facilities where a comprehensive risk screening assessment has not been completed.

For the preferred project design, operational emissions of 0.5046 lbs per day of Fugitive PM_{2.5} exhaust would result in cancer risks of 568 in 1,000,000, well in excess of BAAQMD's CEQA Air Quality Guidelines threshold of 10 in 1,000,000.⁴³ Operational emissions of 0.4615 lbs per day of Fugitive PM_{2.5} exhaust would result in cancer risks of 519 in 1,000,000, also well in excess of BAAQMD's threshold of 10 in 1,000,000.⁴⁴

The FEIR provides no substantial evidence in support of its claims that health risks from operational emissions are insignificant. Dr. Clark's analysis, meanwhile, uses data from the DEIR's own modeling files to show that cancer risks resulting from the Project would significantly exceed some agency thresholds.⁴⁵ Dr. Clark's analysis provides substantial evidence demonstrating that the Project has potentially significant, unmitigated health risks which must be addressed in a revised EIR.

C. The FEIR Fails to Disclose and Mitigate Significant Cumulative Impacts

As indicated in our earlier comments, cumulative impacts, evaluation of which is required by CEQA, may "result from individually minor but collectively significant projects taking place over a period of time."⁴⁶ Lead agencies must consider whether a project's potential impacts, although individually limited, are cumulatively considerable.⁴⁷

⁴³ BAAQMD CEQA Air Quality Guidelines May 2017, p. 2-5.

⁴⁴ Clark Comments, pp. 7-8; see Clark Exhibits 1 & 2.

⁴⁵ BAAQMD's threshold is more appropriate than SCAQMD's in this instance because SCAQMD's Health Risk Calculator does not include diesel particulate matter, a major contributor of

⁴⁶ 14 C.C.R. § 15355(b).

⁴⁷ PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

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In its response to comments on cumulative Project impacts, the City points out that it has opted to follow SCAQMD's methodology for cumulative impacts, which only considers projects that already exceed its thresholds for criteria pollutants as capable of contributing to cumulatively considerable impacts.⁴⁸ Though the 2006 LA CEQA Threshold Guide has also adopted a method to analyze cumulative impacts, the City claims that it has opted for SCAQMD's because the LA CEQA Thresholds Guide "does not take into account all projects that contribute emissions within the Basin."⁴⁹ This argument, however, conflicts with readily available evidence that, under SCAQMD's approach, many projects with potentially significant emissions would not be taken into consideration due to the Project's criteria pollutant emissions being lower than SCAQMD's threshold.

By this "drop in the bucket" reasoning, there would be no limit to the number of projects that could emerge in close vicinity to each other, without any consideration of cumulative impacts, as long as they all kept their individual emissions below SCAQMD's criteria pollutant threshold. As we pointed out in our preliminary comments, the provision of the CEQA Guidelines that permitted agencies to conclude air emissions would be cumulatively insignificant because they are small in the grand scheme of things has been struck down by the Courts. Indeed, as was recognized in *CBE v. CRA* and *Kings County Farm Bureau*, the relevant analysis is not the relative amount of emissions from the Project compared with other emissions, but "whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin."⁵⁰ As Dr. Clark explains in his rebuttal comment letter, the Project's emissions are significant and, when considered along with those from nearby projects, will contribute heavily to impacts to air quality and public health.⁵¹

The Project is located less than 2 blocks away from the much larger 670 Mesquit Project and the 6AM Project, both potential sources of significant emissions from the construction and operational phases.⁵² The 670 Mesquit Project is

⁴⁸ Response to Comment 6-27, p. II-66.

⁴⁹ *Id.*

⁵⁰ *Id.* at 118–121; *Kings County Farm Bureau*, 221 Cal.App.3d at 718.

⁵¹ Clark Comments, pp. 3–4; <https://downtownla.com/maps/development/in-the-pipeline/arts-district/all> (last accessed Jan. 22, 2021).

⁵² City of Los Angeles. 2017. Initial Study, 670 Mesquit Project, Case Number ENV-2017-249-EIR.
City of Los Angeles. 2017. Initial Study, 6AM Project, ENV-2016-3758-EIR
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anticipated to include 308 residential units and approximately 1,484,196 square feet of office, hotel, restaurant, retail, studio/event/gallery and a potential museum, a gym, and structured parking. The 6AM Project would involve the development of approximately 2,824,245 square feet of apartments, condominiums, a hotel, restaurants, retail space, office space, art museum, warehousing, and a school. Given the size and proximity of the 670 Mesquit Project and the 6 AM Project, the 676 Mateo Project will be situated well within the radius of influence for air pollution, GHG emissions and traffic impacts from the larger projects. It is absurd to assume that, because its emissions of criteria pollutants are lower than SCAQMD's threshold, the Project will not have any bearing on air quality impacts when considered in conjunction with these other large projects—not to mention dozens more in the area—developing in close proximity. Even if impacts from these projects were individually limited, they will certainly be cumulatively considerable.

The City's response to comments on cumulative impacts is non-responsive, and provides no legal or evidentiary support for its conclusion that the Project will not contribute to cumulative impacts throughout the region.

D. The FEIR Fails to Disclose, Analyze, and Mitigate Potentially Significant Noise Impacts

Appendix G of the CEQA Guidelines requires consideration in an EIR of “whether a project would result in...[g]eneration of a substantial temporary or periodic increase in ambient noise levels in the vicinity of the project . . .”⁵³ As explained in our Preliminary Comments on the DEIR, the City's analysis of noise impacts from Project construction and operation is inadequate and flawed, starting with insufficient measurements of baseline ambient noise levels. The City's response provides no explanation for its use of inadequate baseline data, nor does it counter our argument with substantial evidence supporting its claim.

In response to our comments regarding the inadequate baseline measurements, the City states only that “the City of Los Angeles CEQA Thresholds Guide does not specify a minimum number or frequency of ambient noise readings that should be taken at a project site or in the project vicinity.”⁵⁴ The City insists that its baseline measurements—two, 15-minute, on-site noise measurements conducted on a single day in the same hour—adequately represented the baseline

⁵³ CEQA Guidelines, Appendix G, Sec. XII(d).

⁵⁴ Response to Comment 6-10, p. II-43.

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ambient noise levels at the Project site.⁵⁵ However, as Mr. Shaw points out, “ambient noise measurements must accurately characterize the ambient noise such that noise generated over the course of the day can be fully assessed with respect to the impacts from a project. Therefore, the Response does not justify or validate the ambient noise measurements used and all subsequent analysis and projections are suspect.”⁵⁶ The City’s response is non-responsive and provides no evidence to support its reliance on overly limited noise data to establish baseline levels.

Furthermore, the City, in response to our comments that the DEIR failed to disclose or mitigate potentially significant noise impacts likely to result from operational noise sources, particularly commercial businesses seeking a permit for the sale and dispensing of alcohol, offered only the assumption that such commercial operations “would manage their own levels to ensure an acceptable patron experience.”⁵⁷ No mitigation or analysis was provided. Any excessive noise, the City maintains, “would be regulated by LAMC Section 116.01, which provides that ‘it shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary, and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.’”⁵⁸

We again reiterate that the City’s approach fails to comply with law. The courts have held that compliance with regulations, including noise ordinances, is not an adequate significance threshold because it does not foreclose the possibility of significant impacts.⁵⁹ Similarly, here, compliance with any LAMC threshold or directive does not assure that noise impacts will be less than significant, or that mitigation will not be required.

⁵⁵ *Id.*; the City’s account of its own data is confusing: responses to comments state that the data presented in Table IV.H-7 of the DEIR was collected on February 14, 2017; Table IV.H-7, however, indicates that its data was collected on July 5, 2017, the same date indicated on the noise monitoring field reports contained in DEIR Appendix I. Neither the DEIR nor the FEIR contain a field report dated February 14, 2017.

⁵⁶ Shaw Rebuttal Comments, p. 2.

⁵⁷ Response to Comment 6-7, p. II-39.

⁵⁸ *Id.*, p. II-40.

⁵⁹ *Keep our Mountains Quiet v. Santa Clara* (2015) 236 Cal.App.4th 714, 733; *CBE v. CRA* (2002) 103 Cal.App.4th 98, 115-16; *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 893, as modified on denial of reh’g (Mar. 20, 2020)

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With respect to construction noise thresholds, the City corrects an error contained in the DEIR, citing the wrong section of the LAMC in reference to a 75-dBA threshold. It clarifies that such threshold was not used by the City to determine construction noise impacts, but rather an increase in ambient levels of 5 dBA or more was considered significant in the City's analysis.⁶⁰ The response, however, does not address our comments regarding significant noise impacts from construction and operation.

The City indicates it has resolved the issue of significant noise impacts to sensitive receptors resulting from haul truck trips by rerouting the haul routes. However, as discussed above, it ignores the inevitable impacts that such a revision will have on the residents who live along the new haul routes. Relocating the haul routes, it asserts, will "increase the distance between Mateo Street sensitive receptors and haul trucks from the 15 feet suggested by the commenter to approximately 330 feet."⁶¹ It says nothing about the distance between the haul trucks and residences along Imperial Street and Santa Fe Avenue.

i. The FEIR Fails to Adequately Mitigate Significant Construction and Operational Noise Impacts

Our DEIR comments explained that the proposed mitigation measures meant to address noise impacts were woefully inadequate. The DEIR included, for example, the installation of an 8-foot barrier to reduce impacts during demolition and excavation/grading activities.⁶² Such a barrier, Mr. Shaw points out, would provide negligible sound attenuation at best, given the height of the sources, receivers, and distance between the barrier and the receiver.⁶³ Even a 20-foot barrier, he explains, would only provide limited mitigation to 2nd-story residences; those on the third floor and above would have no recourse.⁶⁴

In response to these comments, the City indicates that the "primary source of potentially significant construction noise impact on the upper floors of the Biscuit Company Lofts and Toy Factory Lofts is the operation of a concrete saw during

⁶⁰ Response to Comment 6-11, p. II-46.

⁶¹ Response to Comment 6-11, p. II-45.

⁶² MM NOI-1, DEIR Section IV.H Noise, p. IV.H-34.

⁶³ Shaw Rebuttal Comments, pp. 1-2.

⁶⁴ *Id.*

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demolition.”⁶⁵ As relief, it proposes to revise Mitigation Measure MM NOI-1 “to provide alternatives to the use of the concrete saw and/or operational restrictions on the use of demolition equipment that would avoid any impact on the upper floors of the neighboring residential buildings.”⁶⁶ Without any analysis or supporting evidence, the City then concludes that “[n]oise impacts without employing a concrete saw and during all other phases of construction of the Project would be less than significant without mitigation. No further mitigation is warranted.”⁶⁷

Mr. Shaw points out the obvious shortcomings of the revised mitigation measures, most notably the failure to address impacts from any equipment other than a concrete saw:

The Response appears to note only the concrete saw has an impact, while ignoring other equipment that will be closer to sensitive receptors than the reference distance for noise from the equipment, and then only the impact when used near Mateo Street. This ignores the impact from the saw and other equipment, when closer to receivers than the reference distance, not only on the receivers on Mateo Street, but also on receivers on Imperial Street. The Response does not fully address the substantial impact from this equipment.⁶⁸

The FEIR therefore fails to meaningfully respond to the issues raised in our DEIR comments, which pointed out the ineffectual impact that these mitigation measures were likely to have on construction and operation noise. The FEIR also fails to respond to Mr. Shaw’s proposed additional mitigation measure, Plexiglass balcony barriers on the higher levels of the adjacent residential buildings, a measure often used on residential balconies that abut noisy roadways.⁶⁹ The FEIR neglected to adopt this measure, and offers no explanation why it or other feasible mitigation to reduce noise impacts have not been adopted. These responses are inadequate.

⁶⁵ Response to Comment 6-12, p. II-46.

⁶⁶ Response to Comment 6-12, p. II-47.

⁶⁷ *Id.*

⁶⁸ Shaw Rebuttal Comments, p. 3.

⁶⁹ ABJC Preliminary DEIR Comments, p. 13.

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IV. CONCLUSION

The Project presents significant environmental issues that must be addressed prior to Project approval. The FEIR should be revised and recirculated for a full public review period as required by CEQA based on the release of significant new information, including the addition of mitigation measures and a major revision to the Project's haul routes.

The FEIR suffers from a number of additional flaws, including failure to adequately establish the existing baseline upon which to measure noise impacts. The FEIR also fails to perform a health risk analysis of the Project's construction and operational emissions of TACs, in direct contradiction of CEQA's clear mandate that an agency disclose a project's potential health risks to a degree of specificity that would allow the public to make the correlation between the project's impacts and adverse effects to human health. Therefore, the FEIR fails to comply with the requirements of CEQA. The FEIR must be revised and recirculated to correct these errors.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kendra Hartmann", is centered on the page.

Kendra Hartmann

Attachments

KDH:acp

