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VIA EMAIL AND OVERNIGHT MAIL

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Re: Comments on the Initial Study / Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND CPC-2017- 4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR

Dear Mr. Netburn:

We write on behalf of the **Coalition for Responsihle Equitable Economic Development ("CREED LA")** to provide comments on the Initial Study and Mitigated Negative Declaration ("MND") prepared by the City of Los Angeles ("City") for the Rendon Hotel Project ENV-2017-4735-MND CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR ("Project"), The Rendon, LLC (the "Applicant") proposes a one-story addition to an existing three-story hotel and the construction, use, and maintenance of an attached 15-story hotel building with 103 guest rooms and approximately 15,907 square feet of commercial space comprised of an art gallery, café, restaurant, and har uses.¹

The Project site is comprised of two contiguous parcels in the City of Los Angeles, on the northwest corner of East 7th Street and Santa Fe Avenue. The existing three-story, 14,910 square-foot hotel building on the Project Site would remain and would undergo structural alterations, tenant improvements, and a one-story addition, resulting in a four-story building. In total, the Proposed Project

¹ MND p.8.
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would include 67,615 square feet of floor area, resulting in a floor area ratio of 6:1. The 15-story hotel addition would reach a maximum height of 172'-5" above grade. One subterranean level would be provided to include mechanical equipment, storage, bicycle parking, and service areas. Parking would be provided off-site through a private agreement. A valet drop-off area would be located along Santa Fe Avenue, adjacent to the Project Site. Additionally, the Proposed Project would be consistent with the applicable requirements of the LAMC for bicycle parking spaces.²

Based upon our review of the MND and supporting documentation, we conclude that the MND fails to comply with the requirements of the California Environmental Quality Act³ ("CEQA"). The MND fails to accurately describe the Project. Additionally, it fails to analyze all required air quality, land use, parking, water, and noise issues. Lastly, it fails to identify the Project's potentially significant environmental impacts and fails to propose enforceable mitigation measures.

As explained in these comments, there is more than a fair argument that the Project will result in potentially significant impacts relating to air quality, public health, energy, greenhouse gas emissions, hazards, noise, and transportation. The City may not approve the Project until it prepares an environmental impact report ("EIR") that adequately analyzes the Project's potentially significant direct, indirect, and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts.

We prepared these comments with the assistance of environmental health, air quality, and greenhouse gas ("GHG") expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise ("SWAPE") and acoustics expert Neil A. Shaw, FASA, FAES. SWAPE's technical comments and curricula vitae are attached as **Attachment A**.⁴ Mr. Shaw's technical comments and curriculum vitae are attached as **Attachment B**.⁵ The attached expert comments require separate responses under CEQA.⁶ We

² *Id.*

³ Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").

⁴ **Attachment A**: Letter from M. Hagemann and P. Rosenfeld (SWAPE) re *Comments on Rendon Hotel Project (Case Number: ENV-2017-4735-MND)* (February 25, 2021) ("SWAPE Comments").

⁵ **Attachment B**: Letter from Neil A. Shaw re *2053 – 2058 East 7th Street, Los Angeles Project ENV-2017-4735-MND and Appendix F - Noise Impact Review* (March 2, 2021) ("Shaw Comments").

⁶ 14 CCR § 15088(a), (c).
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reserve the right to supplement these comments at later hearings and proceedings related to the Project.⁷

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, 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, 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 on site.

Also, 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 businesses and industries to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. AN EIR IS REQUIRED

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.⁸ "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions

⁷ Gov. Code § 65009(b); PRC § 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.

⁸ See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002. 5078-001acp

before they are made. Thus, the EIR protects not only the environment but also informed self-government.”⁹ The EIR 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.”¹⁰

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.¹¹ CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the “fair argument” standard. Under that standard, a lead agency “shall” prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.¹²

In contrast, a mitigated negative declaration may be prepared only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

- (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur,* and
- (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, *may* have a significant effect on the environment.¹³

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation

⁹ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (*Goletta Valley*), internal citations omitted.

¹⁰ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹¹ See Pub. Resources Code, § 21100.

¹² Pub. Resources Code, §§ 21080, subd. (d), 21082.2, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15064, subds. (f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123 (*Laurel Heights II*); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602 (*Quail Botanical*).

¹³ Pub. Resources Code, § 21064.5 (emphasis added).
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of an EIR.”¹⁴ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.¹⁵ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.¹⁶

“Substantial evidence” required to support a fair argument is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”¹⁷ According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles outlined in Section 15064, subdivision (f):

[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.”¹⁸ Deferring formulation of mitigation measures to post-approval studies is generally impermissible.¹⁹ Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.²⁰ If the identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further

¹⁴ See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

¹⁵ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

¹⁶ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (*Friends of B Street*) (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

¹⁷ CEQA Guidelines, § 15384, subd. (a).

¹⁸ CEQA Guidelines, § 15126.4, subd. (a)(2).

¹⁹ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.

²⁰ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical*, *supra*, 29 Cal.App.4th at p. 1604, fn. 5.

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approvals must be made contingent upon meeting these performance criteria.²¹ Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report's recommendations is insufficient to meet the standard for properly deferred mitigation.²²

Concerning this Project, the MND fails to satisfy the basic purposes of CEQA. The MND fails to adequately disclose, investigate, and analyze the Project's potentially significant impacts and fails to provide substantial evidence to conclude that impacts will be mitigated to a less than significant level. Because the MND lacks basic information regarding the Project's potentially significant impacts, the MND's conclusion that the Project will have a less than significant impact on the environment is unsupported.²³ The City failed to gather the relevant data to support its finding of no significant impacts. Moreover, substantial evidence shows that the Project may result in potentially significant impacts. Therefore, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

III. THE MND FAILS TO PROVIDE AN ACCURATE AND COMPLETE PROJECT DESCRIPTION

An accurate and complete project description is necessary to evaluate the potential environmental effects of a proposed project.²⁴ Without a complete project description, the environmental analysis will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.²⁵ The courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."²⁶ Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs.²⁷

²¹ *Ibid.*

²² *Ibid.*

²³ Pub. Resources Code, § 21064.5.

²⁴ See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

²⁵ See *ibid.*

²⁶ *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

²⁷ *Id.* at pp. 192-193.

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A. The MND Fails to Adequately Describe the Project's Water Usage

The MND fails to include a complete and accurate description of the Project's water use. The MND fails to describe the amount of water that will be used during the Project's 18-month construction period and fails to provide supporting evidence that the amount of water required for construction (whatever that may be) is available from LADWP or other service providers.²⁸ The MND states that the "Project would generate an increase in water demand of approximately 22,244 gallons per day (gpd) of water (or approximately 25-acre feet per year), which is significantly below available capacity."²⁹ However, this calculation only includes *operational* water use (hotel rooms, restaurant, etc.) and does not include water use during the construction or any estimate regarding what amount would be needed during construction.

B. The MND Fails to Adequately Describe the Project's Offsite Parking Agreement

All discussions in the MND related to the Project's proposed off-site parking are extremely short, vague, and lacking detail regarding EV spots and applicable carpool or vanpool areas.³⁰ The Applicant has not provided any details of where this parking would be, how employee parking will be handled, and the viability of obtaining said agreement.³¹

C. The MND Fails to Adequately Describe the Project's Activities that May Result in Significant Noise Impacts

The MND's noise section fails to discuss a variety of facets that may result in significant noise impacts. The MND states that requests for permits for the sale and consumption of alcohol and for dancing on the premises are anticipated.³² However, descriptions of the accompanying activities, such as live or recorded music, are not included in the MND's discussion of potentially significant noise impacts.³³ The MND further fails to disclose whether the Project anticipates the use of sound systems on the rooftop, alcohol use on the rooftop, and where said dancing would

²⁸ MND, Pp.62-63; MND Section XIX (Utilities), pp. 183-185, and pp. 188-189

²⁹ MND Section XIX (Utilities), pp. 183-185, and pp. 188-189

³⁰ MND, pp. 133-134.

³¹ *Id.*

³² MND p. 12; See Shaw Comment letter p.1.

³³ MND p. 12 compared to MND pp. 136-152; See Shaw Comment letter p.1.
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occur, thus failing to describe the facts necessary to determine whether the Project will result in a potentially significant operational noise impact.³⁴

The MND's failure to adequately describe the operational components of the Project renders the analysis that follows incomplete and underestimates the impacts the Project is likely to have on the ambient environment and surrounding residences.

IV. THE MND FAILS TO ANALYZE IMPACTS UNDER CEQA

A. The MND Fails to Analyze Hydrology and Water Quality and Utilities Impacts Due to Water Usage during the Construction of the Project.

First, the MND could have an impact on existing infrastructure and require upgrades since LADWP did not have adequate information to comment on any impact due to lack of information on fire and domestic water needs from the Applicant.³⁵ The MND does not address the Project's fire and domestic water needs, and it is unclear whether the Applicant ever obtained this information and provided it to LADWP to confirm that no upgrades would be necessary.³⁶

The MND then states that "no further upgrades are anticipated at this time" which is true that no upgrades are anticipated but that is because the analysis does not contain all the necessary information for LADWP to provide a full analysis, and therefore determine whether upgrades would be necessary. The failure to provide the necessary information to LADWP results in a flawed, and somewhat premature, conclusion that "potential impacts resulting from water infrastructure improvements would be less than significant."³⁷

Second, the Air Quality construction emissions analysis hinges on a variety of fugitive dust control measures related to wetting the soil during construction.³⁸ Yet, the MND fails to describe the amount of water necessary to comply with these measures and what these measures would do to the quality of the water used.³⁹ The Applicant must provide this basic information so the public and decision-makers

³⁴ See Shaw Comment letter p.1-4.

³⁵ MND, Appendix H p. 10, LADWP Letter regarding Water Needs Question 7.

³⁶ *Id.*

³⁷ MND, p. 185.

³⁸ MND, pp. 62-63.

³⁹ MND, p. 117.

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can meaningfully assess the Project's potential impacts. Further, without this information, there is no support for the Applicant's conclusion that the Project's impacts on Hydrology and Water Quality are less than significant.⁴⁰

B. The MND Fails to Adequately Analyze Noise Impacts

First, as Mr. Shaw explains, noise from boisterous patrons, fueled by alcohol and music being played at the rooftop lounge area will likely have an impact on the residences next to the Project site, and "[t]herefore, the MND's declaration of "no impact" is not supported. It is likely that the Project will result in significant, unmitigated operational noise impacts."

Second, due to the deficiencies above, it is necessary to establish an accurate existing baseline to estimate noise impacts as accurately as possible. The MND fails to provide an accurate description of existing noise conditions because it uses imprecise and inadequate methods to establish a baseline. Any analysis that follows in the MND is therefore flawed.⁴¹

For example, MND Table 4.13, Estimated Exterior Construction Noise at Nearest Sensitive Receptors Without Mitigation, presents data from 15-minute mid-day noise measurements taken at the Project site on one day. Absent from the MND or its analyses are details critical to support its conclusions regarding the existing baseline at the Project site. No description of the environmental conditions in the vicinity, such as the current or former presence of construction and other activities near the measurement locations or other environmental conditions such as wind that could affect the noise baseline measurements are disclosed. There is no statement to the effect "[a]ll equipment is under current calibration, copies of which are available on request" and so the accuracy of the measurements is open to question. Nor is the software used to process, analyze, and present the data disclosed.⁴²

Without this information, the City is unable to determine whether the increase in ambient noise levels caused by Project construction and operation would be significant, as called for by CEQA.⁴³

⁴⁰ MND, p. 117.

⁴¹ Shaw comment letter, pp. 4.

⁴² Shaw comment letter, pp. 4.

⁴³ Shaw comment letter, pp. 4.

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The MND's conclusion that the Project will result in less than significant operational noise impacts, with no mitigation required, is not supported by substantial evidence.⁴⁴

V. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS THAT REQUIRE THE CITY TO PREPARE AN EIR

Under CEQA, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.⁴⁵ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.⁴⁶ An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁴⁷ Substantial evidence can be provided by technical experts or members of the public.⁴⁸ “If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.”⁴⁹

As discussed below, there is a fair argument supported by substantial evidence that the Project may result in significant impacts relating to air quality, public health, energy, greenhouse gas emissions, hazards, noise, and

⁴⁴ MND pp. 136-152.

⁴⁵ Pub. Resources Code, § 21082.2; CEQA Guidelines, § 15064, subds. (f), (h); *Laurel Heights II*, *supra*, 6 Cal. 4th at p. 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical*, *supra*, 29 Cal.App.4th at pp. 1601-1602.

⁴⁶ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁴⁷ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; *see also Friends of B Street*, *supra*, 106 Cal.App.3d at p. 1002 (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an [environmental impact report] and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

⁴⁸ *See, e.g., Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 (substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy); *see also Architectural Heritage Assn. v. County of Monterey*, 122 Cal.App.4th 1095, 1117-1118 (substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing); *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

⁴⁹ CEQA Guidelines, § 15062, subd. (f).
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transportation. The City is required to prepare an EIR to evaluate the Project's impacts and propose mitigation measures to reduce those impacts to a less-than-significant level.

A. There is Substantial Evidence Supporting a Fair Argument that the MND Underestimates and Fails to Properly Mitigate Air Quality Impacts

Under CEQA a project has significant impacts if it “[v]iolate[s] any air quality standard or contribute[s] substantially to an existing or projected air quality violation” or “[e]xpose[s] sensitive receptors to substantial pollutant concentrations.”⁵⁰ The South Coast Air Quality Management District (“SCAQMD”) maintains thresholds of significance for criteria air pollutants that are to be used in determining the significance of a project's air quality impacts under CEQA.⁵¹ The MND acknowledges that the proposed project would result in a significant impact if it exceeds the SCAQMD construction and operational significance thresholds,⁵² but concludes that Project emissions would not violate applicable thresholds.

SWAPE reviewed the MND's air quality analysis and concludes that the MND contains numerous errors and omissions in its emissions modeling which result in the MND substantially underestimating construction and operational emissions. SWAPE performed independent modeling of the Project's construction and operational emissions to correct these errors and concludes that the Project will result in significant health risks from emissions of toxic air contaminants (“TACs”), as well as significant GHG emissions.

1. The MND Fails to Accurately Calculate Construction and Operational Emissions.

The Air Quality construction emissions analysis is flawed due to several factors. As SWAPE explains there were: (1) unsubstantiated input parameters used to estimate project emissions;⁵³ (2) the CalEEMod model used by the Applicant failed to model all proposed land use types in the Project;⁵⁴ (3) the Applicant edited

⁵⁰ CEQA Appendix G.

⁵¹ See SCAQMD Thresholds, available at <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>.

⁵² MND, p. 61.

⁵³ SWAPE comment letter, p.3.

⁵⁴ SWAPE comment letter, pp. 3-4.

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the acres of grading value in the CalEEMod model resulting in an unsubstantiated reduction to acres of grading value;⁵⁵ (4) the Applicant edited the number of hauling trips in the CalEEMod model resulting in an unsubstantiated reduction to default demolition haul trip numbers;⁵⁶ (5) the Applicant edited the number of operational trips types and lengths in the CalEEMod model resulting in unsubstantiated values for operational trips;⁵⁷ and (6) the Applicant failed to properly apply operational mitigation measures resulting in unenforceable mitigation measures.⁵⁸

Additionally, the MND's air quality construction emissions analysis hinges on a variety of fugitive dust control measures related to wetting the soil during construction⁵⁹ Yet, the MND fails to describe the amount of water necessary to comply with these measures and whether such water is available.⁶⁰ Failure to have an adequate water supply to implement these dust control measures could significantly increase the Project's PM emissions during construction, which would significantly alter the MND's Air Quality analysis.

For restaurant odor control, the Applicant cites SCAQMD Rule 1138 stating it requires "the installation of odor reducing equipment."⁶¹ That is only partially correct since Rule 1138 governs "chain-driven charbroilers used to cook meat" which presumably do help contain odor somewhat. Any other form of odor-producing cooking methods are not regulated under Rule 1138 though and thus odors beyond cooked meat are not properly addressed under this section and provide an incomplete picture of whether there could be odors adversely affecting a substantial number of people.⁶² The MND fails to discuss operational odor impacts that would not be regulated by SCAQMD Rule 1138.

Finally, the haul trip distance calculation issues further discussed under V.C presumably underestimate the distance of haul trips by half and would thus be incorrect and would need to be recalculated and then judged against the SCAMD thresholds.

⁵⁵ SWAPE comment letter, p.4.

⁵⁶ SWAPE comment letter, p.5.

⁵⁷ SWAPE comment letter, pp. 6-7.

⁵⁸ SWAPE comment letter, pp. 7-8.

⁵⁹ MND, pp. 62-63.

⁶⁰ *Id.*

⁶¹ MND, p. 70.

⁶² MND, p. 70.

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As a result of the errors in the MND's emissions analysis, the MND's conclusions regarding the severity of the Project's air quality impacts are unsupported.

B. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant, Unmitigated Health Risk from Toxic Air Contaminants

SWAPE performed a Health Risk Screening Analysis, which looked at air emissions and their correlation to risks of increased cancer.⁶³ SWAPE's analysis relied on "OEHHA guidance and recommended guidance put out by the SCAQMD, BAAQMD, and SJVAPCD" to account for the carcinogenic toxicity of air pollution.⁶⁴ SWAPE determined that the construction and operation of the Project could result in a potentially significant health risk impact when correct exposure assumptions and up-to-date applicable guidance are used.⁶⁵ Specifically, SWAPE found that the excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy throughout Project construction and operation, utilizing age sensitivity factors, are approximately 13, 120, 360, and 21 in one million, respectively, and that the excess cancer risk throughout a residential lifetime (30 years), utilizing age sensitivity factors, is approximately 520 in one million.⁶⁶ All of these cancer risks exceed the SCAQMD threshold of 10 in one million, resulting in a potentially significant impact that the MND fails to disclose or mitigate.

SWAPE's comments provide substantial evidence supporting a fair argument that the Project will result in potentially significant health risks that the MND underestimates and fails to properly mitigate.

C. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant, Unmitigated GHG Emissions

CEQA requires the lead agency to use scientific data to evaluate GHG impacts directly and indirectly associated with a project.⁶⁷ The analysis must

⁶³ SWAPE comment letter, pp.12-16.

⁶⁴ SWAPE comment letter, p.14.

⁶⁵ SWAPE comment letter, p.16 vs. MND, p. 69.

⁶⁶ SWAPE comment letter, p.15.

⁶⁷ See 14 C.C.R. § 15064.4(a) (lead agencies "shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project); 14 C.C.R. § 15064(d) (evaluating significance of the environmental effect of a project requires consideration of reasonably foreseeable indirect physical

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“reasonably reflect evolving scientific knowledge and state regulatory schemes.”⁶⁸ In determining the significance of GHG emissions impacts, the agency must consider the extent to which the project may increase GHG emissions compared to the existing environmental setting and 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 GHG emissions.”⁶⁹

Under Section 15064.4, an agency can either measure GHG emissions (1) numerically (by comparing tons/metric tons of GHG emissions to a numeric – e.g. “Quantitative” - GHG significance threshold), or (2) by determining whether the project is consistent with applicable climate change plans / GHG reduction plans (“Qualitative” threshold).⁷⁰

The City either did not understand this distinction or deliberately tried to obfuscate their findings by combining the two approaches.⁷¹ The MND’s GHG analysis starts by calculating a GHG amount for the project indicating that the MND would utilize a quantitative approach. After this initial analysis, the MND then goes on to claim that because none of the applicable climate change plans / GHG reduction plans contains a project-specific quantitative GHG significance threshold (which they do), the City’s quantitative GHG number is thus not in violation of any of the climate change plans.

changes caused by the project); 14 C.C.R. § 15358(a)(2) (defining “effects” or “impacts” to include indirect or secondary effects caused by the project and are “later in time or farther removed in distance, but are still reasonably foreseeable” including “effects on air”); CEQA Guidelines, Appendix G, § VIII: Greenhouse Gas Emissions (stating agencies should consider whether the project would “generate greenhouse gas emissions, *either directly or indirectly*, that may have a significant impact on the environment.”) (emphasis added).

⁶⁸ 14 C.C.R. § 15064.4(b); see also *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504 (holding that lead agencies have an obligation to track shifting regulations and to prepare EIRs in a fashion that keeps “in step with evolving scientific knowledge and state regulatory schemes”).

⁶⁹ 14 C.C.R. § 15064.4(b)(1), (3).

⁷⁰ 14 C.C.R. § 15064.4.

⁷¹ MND, pp.104-109.

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1. Failure to Adequately Evaluate Greenhouse Gas Impacts

The MND estimates that the Project would generate net annual GHG emissions of 898.90 metric tons of carbon dioxide equivalents per year ("MT CO₂e/year"), after the inclusion of GHG reduction measures (see excerpt below).⁷²

Table 4.9
Proposed Project Operational Greenhouse Gas Emissions

Emissions Source	Estimated Project Generated CO ₂ e Emissions (Metric Tons per Year)		
	Base Project Without GHG Reduction Features	Proposed Project	Percent Reduction ^a
Area	<0.01	<0.01	0%
Energy	373.08	373.08	0%
Mobile (Motor Vehicles)	591.04 ^{b,c}	473.98	20%
Stationary	4.59	4.59	0%
Waste	28.36	14.18	50%
Water	24.34	19.47	20%
Construction Emissions ^d	13.60	13.60	--
Total GHG Emissions:	1,035.01	898.90	13%
Notes: ^a The Percent Reduction is not a quantitative threshold of significance, but shows the efficacy of the Project's compliance with the various regulations, plans and policies that have been adopted with the intent of reducing GHG emissions. ^b Based on Proposed Project mobile source GHG emissions excluding Mitigation Measures and reduced VMT. ^c Calculated proportionately based on Proposed Project mobile trips with reductions 494 trips to trips without reductions 616 trips and multiplied with the GHG emissions of 473.98 MTCO ₂ e. ^d The total construction GHG emissions were amortized over 30 years and added to the operation of the Project. Calculation data and results provided in Appendix E, Greenhouse Gas Emissions Worksheets.			

However, the MND does not compare the Project's net annual GHG emissions estimates to a quantitative GHG threshold, stating:

"In the absence of any adopted numeric threshold, the significance of the Project's GHG emissions is evaluated consistent with CEQA Guidelines Section 15064.4(b)(2) by considering whether the Project complies with applicable plans, policies, regulations, and requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. For this Project, as a land use development project, the most directly applicable adopted regulatory plan to reduce GHG emissions is the

⁷² MND, p.104; SWAPE Comment letter, p. 16.
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2020 RTP/SCS, which is designed to achieve regional GHG reductions from the land use and transportation sectors as required by SB 375 and the State's long-term climate goals. This analysis also considers consistency with regulations or requirements set forth by the 2008 Scoping Plan and subsequent updates SB 375, SCAG's 2020 RTP/SCS, and the L.A. Green Building Code."⁷³

As demonstrated in the excerpt above, the Project relies upon the Project's consistency with CARB's 2017 *Scoping Plan*, SB 375, SCAG's 2020 *RTP/SCS*, and the L.A. Green Building Code to conclude that the Project would result in a less-than-significant GHG impact. However, the MND's GHG analysis, as well as the subsequent less-than-significant impact conclusion, is unsupported for four reasons.⁷⁴

a) The MND's quantitative GHG analysis relies upon an incorrect and unsubstantiated air model.

As previously stated, the MND estimates that the Project would generate net annual GHG emissions of 898.90 MT CO_{2e}/year, after the inclusion of GHG reduction measures.⁷⁵ However, the MND's quantitative GHG analysis is unsubstantiated. When SWAPE reviewed the Project's CalEEMod output files, provided in the Greenhouse Gas Emissions Worksheets as Appendix E to the MND, they found that several of the values inputted into the model are not consistent with information disclosed in the IS/MND. As a result, SWAPE concludes that the MND's emissions modeling underestimates the Project's emissions, and the MND's quantitative GHG analysis should not be relied upon to determine Project significance.

An EIR should be prepared that adequately assesses the potential GHG impacts that the construction and operation of the proposed Project may have on the surrounding environment.⁷⁶

⁷³ MND, p.103; SWAPE Comment letter, p. 17.

⁷⁴ SWAPE Comment letter, p. 17.

⁷⁵ MND, p.104.

⁷⁶ SWAPE comment letter, p.17.

b) The MND's unsubstantiated air model indicates a potentially significant impact.

The MND's incorrect and unsubstantiated air model indicates a potentially significant GHG impact, when applying the widely-used 2030 "Substantial Progress" threshold of 660 MT CO₂e/year⁷⁷ and AEP "2030 Land Use Efficiency Threshold" of 2.6 metric tons of carbon dioxide equivalents per service population per year ("MT CO₂e/SP/year").⁷⁸ In support of thresholds for the 2030 target, AEP guidance states:

*"Once the state has a full plan for 2030 (which is expected in 2017), and then a project with a horizon between 2021 and 2030 should be evaluated based on a threshold using the 2030 target. A more conservative approach would be to apply a 2030 threshold based on SB 32 for any project with a horizon between 2021 and 2030 regardless of the status of the Scoping Plan Update" (emphasis added).*⁷⁹

As the California Air Resources Board ("CARB") adopted California's 2017 Climate Change Scoping Plan in November of 2017, the proposed Project "should be evaluated based on a threshold using the 2030 target," according to the relevant guidance referenced above. Thus, to evaluate the Project's GHG emissions quantitatively, SWAPE compared the Project's GHG emissions, as estimated by the IS/MND, to the widely-used 2030 "Substantial Progress" threshold of 660 MT

⁷⁷ See: "JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT." City of Daly City, June 2019, available at: https://files.ceqanet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK_TbVP3sWar00-Zx87dh7ji80vbRH0, p. 7; "TO 20-01 PAPÉ MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT." City of Fremont, February 2020, available at: "SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT." City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6; SWAPE Comment letter, p. 18.

⁷⁸ "Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California." Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40.

⁷⁹ "Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California." Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40.

CO₂e/SP/year⁸⁰ and AEP “2030 Land Use Efficiency Threshold” of 2.6 MT CO₂e/SP/year.⁸¹

The MND estimates that the Project would generate net annual GHG emissions of 898.90 MT CO₂e/year. Furthermore, according to CAPCOA’s CEQA & Climate Change report, service population is defined as “the sum of the number of residents and the number of jobs supported by the project.”⁸² The MND estimates that the Project would employ approximately 216 people upon buildout.⁸³ As the Project does not propose any residential land uses, SWAPE estimates a service population of 216 people.⁸⁴ Dividing the Project’s GHG emissions, as estimated by the IS/MND, by a service population value of 216 people, SWAPE finds that the Project would emit approximately 4.2 MT CO₂e/SP/year (see table below).⁸⁵

IS/MND Modeling Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Net Annual GHG Emissions	899
Threshold	660
Exceed?	Yes
Service Population	216

⁸⁰ See: “JEFFERSON UNION HIGH SCHOOL DISTRICT FACULTY & STAFF HOUSING PROJECT AIR QUALITY & GREENHOUSE GAS ASSESSMENT.” City of Daly City, June 2019, available at: <https://files.ceganet.opr.ca.gov/257215-2/attachment/k-aC8VdC7LV3xz75yuUmtGiiExH-Y7HEPQ-dU-YIxuhNp95Dx9bK TbVP3sWar00-Zx87dh7ji80vbRH0>, p. 7; “TO 20-01 PAPER MACHINERY AIR QUALITY & GREENHOUSE GAS EMISSIONS ASSESSMENT.” City of Fremont, February 2020, available at: “SOLAR4AMERICA ICE FACILITY EXPANSION AIR QUALITY AND GREENHOUSE GAS EMISSION ASSESSMENT.” City of San Jose, September 2019, available at: https://www.fremont.gov/DocumentCenter/View/44974/4_Appendix-1_Air-Quality-GHG-Assessment, p. 18; and <https://www.sanjoseca.gov/Home/ShowDocument?id=45200>, p. 6.

⁸¹ SWAPE comments, p. 18, citing “Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California.” Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40; SWAPE Comment letter, p. 16.

⁸² CAPCOA (Jan. 2008) CEQA & Climate Change, p. 71-72, <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf>.

⁸³ MND, p. 127.

⁸⁴ Calculated: 216 employees + 0 residents = 216 service population.

⁸⁵ Calculated: (898.90 MT CO₂e/year) / (216 service population) = (4.2 MT CO₂e/SP/year); SWAPE Comment letter, p. 18.

Service Population Efficiency	4.2
Threshold	2.6
<i>Exceed?</i>	<i>Yes</i>

As demonstrated above, the Project's estimated net annual GHG emissions and service population efficiency value exceed the 2030 "Substantial Progress" threshold of 660 MT CO₂e/SP/year and AEP's "2030 Land Use Efficiency Threshold" of 2.6 MT CO₂e/SP/year, respectively. As a result, SWAPE concludes that the MND's less-than-significant GHG impact conclusion should not be relied upon. An EIR should be prepared for the Project and mitigation measures should be implemented to reduce the Project's GHG emissions to less-than-significant levels.⁸⁶

c) The MND fails to consider the performance-based standards under CARB's *Scoping Plan*.

The Project relies upon the Project's consistency with CARB's 2017 *Scoping Plan* to conclude that the Project would result in a less-than-significant GHG impact (p. 103). However, SWAPE's review of the Project documents demonstrates that the MND fails to consider the performance-based standards under the CARB's 2017 *Scoping Plan*.⁸⁷

(1) Passenger & Light Duty VMT Per Capita Benchmarks per SB 375

In reaching the State's long-term GHG emission reduction goals, CARB's 2017 *Scoping Plan* explicitly cites to SB 375 and the VMT reductions anticipated under the implementation of Sustainable Community Strategies.⁸⁸ CARB has identified the population and daily VMT from passenger autos and light-duty vehicles at the state and county level for each year between 2010 to 2050 under a "baseline scenario" that includes "current projections of VMT included in the existing Regional Transportation Plans/Sustainable Communities Strategies (RTP/SCSs) adopted by the State's 18 Metropolitan Planning Organizations (MPOs)

⁸⁶ SWAPE Comment letter, p. 19.

⁸⁷ SWAPE Comment letter, p. 19.

⁸⁸ "California's 2017 Climate Change Scoping Plan." CARB, November 2017, *available at*: https://ww3.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf, p. 25, 98, 101-103.

pursuant to SB 375 as of 2015.”⁸⁹ By dividing the projected daily VMT by the population, SWAPE calculated the daily VMT per capita for each year at the state and county level for 2010 (baseline year), 2024 (Project operational year), and 2030 (target years under SB 32) (see table below and Attachment B).⁹⁰

2017 Scoping Plan Daily VMT Per Capita						
	Los Angeles County			State		
Year	Population	LDV VMT Baseline	VMT Per Capita	Population	LDV VMT Baseline	VMT Per Capita
2010	9,838,771	216,979,221.64	22.05	37,335,085	836,463,980.50	22.40
2024	10,627,846	219,237,756.72	20.63	41,994,283	926,776,780.89	22.07
2030	10,868,614	215,539,586.12	19.83	43,939,250	957,178,153.20	21.78

As explained in SWAPE’s comments, the below table compares the 2017 *Scoping Plan* daily VMT per capita values against the daily VMT per capita values for the Project based on SWAPE’s updated modeling (see table below and Attachment B).

Daily VMT Per Capita from Passenger & Light-Duty Trucks, Exceedances under 2017 Scoping Plan Performance-Based SB 375 Benchmarks	
Sources	SWAPE Modeling
Annual VMT from Auto & Light-Duty Vehicles	2,360,016
Daily VMT from Auto & Light-Duty Vehicles	6,466
Service Population	216
Daily VMT Per Capita	29.93
2017 Scoping Plan Benchmarks, Statewide	
22.40 VMT (2010 Baseline) Exceed?	Yes
22.07 VMT (2024 Projected) Exceed?	Yes
21.78 VMT (2030 Projected) Exceed?	Yes

⁸⁹ “Supporting Calculations for 2017 Scoping Plan-Identified VMT Reductions,” Excel Sheet “Readme.” CARB, January 2019, available at: https://ww2.arb.ca.gov/sites/default/files/2019-01/sp_mss_vmt_calculations_jan19_0.xlsx.

⁹⁰ SWAPE Comment letter, pp. 19-20.
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2017 Scoping Plan Benchmarks, Los Angeles County Specific	
22.05 VMT (2010 Baseline) Exceed?	Yes
20.63 VMT (2024 Projected) Exceed?	Yes
19.83 VMT (2030 Projected) Exceed?	Yes

As shown above, SWAPE's updated modeling estimates that the Project exceeds the CARB 2017 *Scoping Plan* projections for 2010, 2024, and 2030. Because the exceeds the CARB 2017 *Scoping Plan* performance-based daily VMT per capita projections, the Project conflicts with the CARB 2017 *Scoping Plan*. As such, a Project-specific EIR should be prepared for the proposed Project to provide additional information and analysis demonstrating that the Project would result in a less-than-significant GHG impact.⁹¹

d) The MND fails to consider the performance-based standards under SCAG's RTP/SCS.

The Project relies upon the Project's consistency with SCAG's 2020-2045 *RTP/SCS* in order to conclude that the Project would result in a less-than-significant GHG impact. However, SWAPE's review of the Project documents demonstrates that the MND fails to consider the performance-based standards under SCAG's 2020-2045 *RTP/SCS*, such as: (i) per capita GHG emission targets, or (ii) daily vehicle miles traveled ("VMT") per capita benchmarks.⁹²

(1) SB 375 Per Capita GHG Emission Goals

SB 375 was signed into law in September 2008 to enhance the state's ability to reach AB 32 goals by directing CARB to develop regional 2020 and 2035 GHG emission reduction targets for passenger vehicles (autos and light-duty trucks). In March 2018, CARB adopted updated regional targets requiring a 19 percent decrease in VMT for the SCAG region by 2035. This goal is reflected in SCAG's 2020 RTP/SCS Program Environmental Impact Report ("PEIR"),⁹³ in which the 2020

⁹¹ SWAPE Comment letter, p. 20.

⁹² SWAPE Comment letter, p. 20.

⁹³ "Connect SoCal Certified Final Program Environmental Impact Report." SCAG, May 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocial_complete.pdf?1607981618.5078-001acp

RTP/SCS PEIR updates the per capita emissions to 21.3 lbs/day in 2020 and 18.8 lbs/day in 2035 (see excerpt below).⁹⁴

**Table 3.8-10
SB 375 Analysis**

	2005 (Baseline)	2020 (Plan)	2035 (Plan)
Resident population (per 1,000)	17,161	19,194	21,110
CO2 emissions (per 1,000 tons)	204.0 ^{a/}	204.5 ^{b/}	198.6 ^{b/}
Per capita emissions (pounds/day)	23.8	21.3	18.8
% difference from Plan (2020) to Baseline (2005)			-8%
% difference from Plan (2035) to Baseline (2005)			-19%

Note:

/a/ Based on EMFAC2007

/b/ Based on EMFAC2014 and SCAG modeling, 2019.

/c/ Includes off-model adjustments for 2035 and 2045

Source: SCAG modeling, 2019.

<http://www.scag.ca.gov/committees/CommitteeDocsLibrary/jointRCPC110515fullagm.pdf>

In order to evaluate consistency with this SB 375 objective and SCAG's RTP/SCS performance-based goals, SWAPE calculated the Project's per-capita CO₂ emissions from passenger and light duty vehicles (see Attachment B). First, total annual GHG mobile emissions were multiplied by the percentage of auto and light-duty truck fleet mix, then converted into total pounds per day, then divided by the estimated service population of 216. The below table shows the per capita emissions for the Project based on SWAPE's updated modeling (see table below and Attachment B).⁹⁵

CO ₂ e Per Capita Emissions from Passenger & Light-Duty Trucks,	
Exceedances under RTP/SCS Performance-Based SB 375 Goals	
Sources	Project

⁹⁴ "Connect SoCal Certified Final Program Environmental Impact Report." SCAG, May 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocial_complete.pdf?1607981618, p. 3.8-74; SWAPE Comment letter, p. 21.

⁹⁵ SWAPE Comment letter, p. 21.
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	SWAPE Modeling
Annual Mobile Emissions (MT CO ₂ e/year)	1,020.28
Passenger & Light-Duty Fleet Mix (%)	91.22%
Daily CO ₂ e Emissions (lbs/day)	5,621.31
Service Population	216
Per Capita Emissions (lbs/day)	26.02
21.3 lbs/day/SP (2020 Goal) Exceeded?	Yes
18.8 lbs/day/SP (2035 Goal) Exceeded?	Yes

As shown in the above table, when utilizing SWAPE's updated modeling, the Project would result in 26.02 pounds per day per service population ("lbs/day/SP"). This exceeds both SCAG's 2020 and 2035 targets of 21.3- and 18.8-lbs/day/SP, respectively, indicating that the Project is inconsistent with SCAG's *RTP/SCS*.⁹⁶

(2) SB 375 RTP/SCS Daily VMT Per Capita Target

Under the SCAG's 2020 *RTP/SCS*, daily VMT per capita in the SCAG region should decrease from 23.2 VMT in 2016 to 20.7 VMT by 2045.⁹⁷ Daily VMT per capita in San Bernardino County should decrease from 22.2 to 19.2 VMT during that same period.⁹⁸

Here, however, the MND fails to consider any of the abovementioned performance-based VMT targets. In order to evaluate consistency with the *RTP/SCS*'s performance-based VMT reduction targets, SWAPE calculated the Project's VMT from passenger and light duty vehicles (calculations attached hereto as Attachment B). First, annual VMTs from passenger automobile and light-duty vehicle were calculated based on the CalEEMod default fleet mix, converted into daily VMT, and divided by the estimated service population of 216. The below table

⁹⁶ SWAPE Comment letter, p. 22.

⁹⁷ "Connect SoCal." SCAG, September 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal-plan_0.pdf?1606001176, pp. 138.

⁹⁸ "Connect SoCal." SCAG, September 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal-plan_0.pdf?1606001176, pp. 138; SWAPE Comment letter, p. 22. 5078-001acp

shows the daily VMT per capita for the Project based on SWAPE's updated modeling (see table below and Attachment B).⁹⁹

Daily VMT Per Capita from Passenger & Light-Duty Trucks, Exceedances under RTP/SCS Performance-Based SB 375 Target	
Sources	Project
	SWAPE Modeling
Annual VMT from Auto & Light-Duty Vehicles	2,360,016
Daily VMT from Auto & Light-Duty Vehicles	6,466
Service Population	216
Daily VMT Per Capita	29.93
2020 RTP/SCS Benchmarks, SCAG-Wide	
23.2 VMT (2016 Baseline) Exceed?	Yes
20.7 VMT (2045 Target) Exceed?	Yes
2020 RTP/SCS Benchmarks, Los Angeles County	
22.2 VMT (2016 Baseline) Exceed?	Yes
19.2 VMT (2045 Target) Exceed?	Yes

As shown in the above table, based on a service population of 216, the Project would result in 29.93 daily VMT per capita from passenger auto and light-duty truck vehicles. This exceeds all SCAG and Los Angeles County specific benchmarks and targets under SCAG's 2020-2045 *RTP/SCS*. Thus, based on SWAPE's updated modeling, the Project would exceed the 2016 baseline and 2045 target VMT per

⁹⁹ SWAPE Comment letter, p. 23.
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capita values for both Los Angeles County and the SCAG region as a whole, indicating that the Project conflicts with the SCAG's *RTP/SCS* and SB 375.¹⁰⁰

Because the MND fails to provide either a quantitative or qualitative analysis of these issues, the MND lacks substantial evidence to support its conclusion that the Project's GHG impacts would be less than significant. SWAPE's analysis provides substantial evidence supporting a fair argument that the Project may result in significant GHG emissions which the MND underestimates and fails to properly mitigate.

2. The MND Fails to Adopt All Feasible Mitigation Measures to Reduce Significant GHG Impacts

SWAPE provides an abundance of feasible mitigation measures the Project could use to reduce the impacts of its GHG emissions, which the MND fails to consider. For example, SWAPE provides a list of proposals from CAPCOA's Quantifying Greenhouse Gas Measures Report.¹⁰¹ Mitigation measures proposed by SWAPE include, among other things, programable thermostats, limits on outdoor lighting, alternative energy generation, grouped parking requiring residential permits, carpooling programs, school bus programs, local shuttles, water recycling, water-efficient landscapes, alternative fuels for construction equipment, carbon sequestration, and local and sustainable building materials.¹⁰²

In light of this readily available information, the burden is on the City to explain specifically whether it believes the proposed mitigation is not feasible, and if not, why not.¹⁰³ All feasible mitigation should be adopted in a revised MND.

D. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts from Energy Use

CEQA requires agencies to analyze a project's energy impacts when "the project's energy use reveals that the project may result in significant environmental effects due to the wasteful, inefficient, or unnecessary use of energy...."¹⁰⁴ The

¹⁰⁰ SWAPE Comment letter, p. 23.

¹⁰¹ SWAPE Comments, pp. 43-51.

¹⁰² SWAPE comment letter, pp. 23-30.

¹⁰³ See *Covington*, 43 Cal.App.5th at 879-883 (holding that revised EIR was required where respondent failed to explain why the petitioners' proposed mitigation measure was not feasible).

¹⁰⁴ 14 C.C.R. § 15126.2(b).

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CEQA Guidelines also state that the analysis of a project's energy impacts "should include the project's energy use for all project phases and components," and that relevant considerations include "the project's size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project."¹⁰⁵ Further guidance for considering energy impacts is included in Appendix F of the Guidelines, which states that the energy analysis may include the project's energy requirements "for each stage of the project including construction, operation, maintenance and/or removal," "[t]he effects of the project on local and regional energy supplies and on requirements for additional capacity," and "[t]he effects of the project on peak and base period demands for electricity and other forms of energy."¹⁰⁶

First, during the construction phase the energy usage is calculated incorrectly since Appendix C: (a) fails to differentiate which site the hauling calculation is determined from; and (b) fails to account for two-way trips to the Sunshine Canyon landfill thus resulting in incorrect gasoline and diesel consumption calculations.¹⁰⁷

The Construction Worker, Vendor, and Hauling Gasoline and Diesel Consumption table in Appendix C has a column titled trip length. During the demolition and grading phase, this column has the trip length listed as 30 miles.¹⁰⁸ It is unclear how this number was determined since trips to the Waste Management Downtown Diversion recycling facility are 1.4 miles round trip and trips to the Sunshine landfill are 60 miles round trip.

If some average was performed between the two centers it is not clear in Appendix C or the MND. Appendix C, and the MND, should reflect the number of trips to the Waste Management site round trip in miles then add it to the number of trips to the Landfill in miles, and then divide that number by the total number of round trips for the correct haul length. On the other hand, if the number indicates the Sunshine Canyon landfill haul trips only the calculation is incorrect because it only calculates half the trip because it is 30 miles to the landfill and another 30 back to the site. Thus the Applicant has either failed to correctly perform the

¹⁰⁵ *Id.*

¹⁰⁶ CEQA Guidelines, Appendix F: Energy Conservation, §§ C(1)–C(3).

¹⁰⁷ See MND, p.44-45 compared to MND, p. 82 Table 4.4 and MND, Appendix C p.5.

¹⁰⁸ See MND, p.44-45 compared to MND, p. 82 Table 4.4 and MND, Appendix C p.5.
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calculations or deprived the public and decision-makers of the math behind these calculations.

Second, the operational energy uses calculations fail to account for all the commercial space energy uses. Tables 4.5 and 4.6 in the Energy Use section assume 103 hotel rooms during operation and these rooms will consume 512,522kWh/year and 1,588,982cf/month. These two tables, along with the entire Energy Use section, fail to account for all types of operational energy use because they only account for energy consumed by the hotel rooms and not the “approximately 15,907 square feet of commercial space comprised of an art gallery, café, restaurant, and bar.”¹⁰⁹ This is a legal deficiency according to CEQA Appendix F because the MND because fails to provide substantial evidence of all the Project’s operational energy uses.¹¹⁰ Thus, the MND’s conclusion that the energy use has a “less than significant impact” is premature since it fails to analyze all operational energy uses.¹¹¹ The City cannot rely on conclusory statements in the MND to support its significance determinations regarding energy impacts.

E. The MND Lacks Substantial Evidence to Support its Conclusion that the Project Will Not Result in Significant, Unmitigated Impacts from Hazards on the Project Site

A lead agency’s significance determination must be supported by accurate scientific and factual data.¹¹² An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.¹¹³ These standards apply to an EIR’s analysis of the public health impacts of a Project.

The disturbance of toxic soil contamination at a project site is a potentially significant impact requiring CEQA review and mitigation.¹¹⁴ Indeed, this is the

¹⁰⁹ MND, p. 8.

¹¹⁰ CEQA Guidelines, Appendix F: Energy Conservation, §§ C(1)–C(3).

¹¹¹ MND, p.88.

¹¹² 14 C.C.R. § 15064(b).

¹¹³ *Kings County Farm Bureau*, 221 Cal.App.3d at 732.

¹¹⁴ *Cal. Build. Indust. Ass’n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90; ; *Citizens For Responsible Equitable Envt’l Dev. v. City of Chula Vista* (2011) 197 Cal App.4th 327, 331-2 (“*CREED v. Chula Vista*”).

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only way to explain a long line of cases requiring analysis and clean-up of hazardous waste the site of a proposed project as part of the CEQA analysis.¹¹⁵

The failure to provide the information required by CEQA makes a meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.¹¹⁶ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in a CEQA document 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.¹¹⁷

In this case, the MND concludes that the Project would have less than significant hazardous materials impacts based on an unsupported conclusion stating no hazards are present at the Project site. However, as Mr. Hagemann explains, the MND's conclusion is entirely unsupported because the MND failed to conduct a soil or groundwater study to determine whether hazards are present, including failing to prepare even a Phase I Environmental Site Assessment ("ESA") for the Project site.¹¹⁸ Instead, the MND found a less than significant impact based solely on a regulatory database search of the California Department of Toxic Substances Control Envirostor website.¹¹⁹ This approach fails to comply with CEQA, and as Mr. Hagemann explains, fails to meet basic standards of care associated with hazards assessment for construction projects.

The EPA banned asbestos-containing materials in 1989, and lead-based paints were banned for use in 1978. The existing building on the Project Site was constructed in 1914. Therefore, some building material such as dry wall, stucco, as well as the sheet roofing and mastic are suspected to contain asbestos may have been used in the building.¹²⁰ This could be confirmed through the use of a Phase I ESA.

¹¹⁵ *Association For A Cleaner Environment v. Yosemite Comm. College Dist.* (2004) 116 Cal.App.4th 629 ("ACE v. Yosemite"), *McQueen v. Bd. of Directors* (1988) 202 Cal.App.3d 1136; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1599 CEQA Guidelines, Appendix G.

¹¹⁶ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

¹¹⁷ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

¹¹⁸ SWAPE comment letter, p.2.

¹¹⁹ <https://www.envirostor.dtsc.ca.gov/public/>; MND, p. 111.

¹²⁰ MND, p. 112.
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A Phase I ESA is often included in CEQA documentation to identify hazardous materials issues that may pose a risk to the public, workers, or the environment, and which may require further investigation through the conduct of a Phase II ESA. Components of a Phase I include:

- a review of all known sites in the vicinity of the subject property that are on regulatory agency databases undergoing assessment or cleanup activities;
 - an inspection;
 - interviews with people knowledgeable about the property; and
 - recommendations for further actions to address potential hazards.
- Standards for performing a Phase I ESA have been established by the US EPA and the American Society for Testing and Materials Standards (ASTM).¹²¹

Phase I ESAs conclude with the identification of any “recognized environmental conditions” (“RECs”) and recommendations to address such conditions. A REC is the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or the ground, groundwater, or surface water of the property. If RECs are identified, then a Phase II ESA generally follows, which includes the collection of soil, soil vapor, and groundwater samples, as necessary, to identify the extent of contamination and the need for cleanup to reduce exposure potential to the public.¹²²

Mr. Hagemann explains that a search of the Envirostor website, as performed for the MND, is insufficient for determining Project impacts. One diligence practices commonly used in CEQA proceedings include the preparation of a Phase I ESA, completed by a licensed environmental professional. The preparation of an EIR, to include a Phase I ESA, is necessary to identify recognized environmental conditions, if any, at the proposed Project site. Mr. Hagemann concludes that the MND should have performed a Phase I ESA in order to determine for the Project of whether hazards exists, since the Envirostar website

¹²¹ <http://www.astm.org/Standards/E1527.htm>; SWAPE comment letter, p.2

¹²² SWAPE comment letter, p.2
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only relies on reported hazards, and not necessarily hazards specific to this Project site.¹²³

Mr. Hagemann further explains that, if a REC is identified, a Phase II ESA should be conducted to sample for potential contaminants in soil, soil vapor, and groundwater. Any contamination that is identified above regulatory screening levels, including California Office of Environmental Health Hazard Assessment's Soil Screening Numbers¹²⁴, should be further evaluated and cleaned up, if necessary, in coordination with the Regional Water Quality Control Board and the California Department of Toxic Substances Control.¹²⁵

As a result of the City's failure to disclose and analyze the Project's potential soil and groundwater contamination, the City lacks substantial evidence to support the MND's conclusions that the Project's hazardous materials impacts are less than significant. The City should prepare an EIR to include the Phase I and Phase II ESAs necessary to accurately evaluate the Project site's existing levels of contamination and to propose mitigation measures to fully clean the site to residential standards before Project construction can begin.

F. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts from Noise

First, the MND incorrectly determines the baseline ambient dB levels.¹²⁶ The MND's ambient dB levels may not be indicative of an actual baseline since the test was limited to 15 min at noon. One 15-minute time period cannot accurately determine the ambient noise from 7 AM to 6 PM, which are the hours of construction per proposed Mitigation Measure MM-N-1 for this project. Ambient noise varies and is due to the traffic flow and construction activities at the time of the measurement, and therefore may not be "comparable to that during which the measurement is taken of the particular noise source being measured."¹²⁷

Second, the MND proposes that the 8ft wall will result in a 10 dB reduction in noise. Common sense dictates otherwise since an 8ft wall will not protect

¹²³ SWAPE comment letter, p.2

¹²⁴ <http://oehha.ca.gov/risk/chhsltable.html>

¹²⁵ SWAPE comment letter, p.2

¹²⁶ Shaw comment letter, p.2.

¹²⁷ City of Los Angeles Municipal Code Chapter XI Noise Regulation 111.01 (a); Shaw comment letter, p.2.
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adjacent stories that are higher than 8ft next to the construction site. Sound is a wave and thus radiates in all directions equally. Thus, an 8ft wall will only result in dB reduction for the single adjacent story to the construction site and only when construction noise emanates from the first floor. This measure fails to account for construction on floors 2-15, but the MND acts as if this reduction level can apply to the entire project.¹²⁸

These issues provide substantial evidence supporting a fair argument that the MND underestimates and fails to properly mitigate Noise impacts on the Project Site.

G. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts on Transportation

First, bullet D.5 under the MND's Transportation section claims that the Project will meet the TDM requirements under LAMC Section 12.26.J which regulates Transportation Demand Management and Trip Reduction Measures.¹²⁹ The MND claims this even though LAMC section 12.26.J requires that certain areas be designated for employee carpool and vanpool for commercial spaces over 25,000ft and the MND fails to address how this requirement is met. The MND merely makes a conclusory statement that this LAMC section will be met without any discussion or analysis of how. The MND may be lumping this LAMC section 12.26.J requirement into its variance request for offsite parking. Even if this were the case, the MND fails to analyze whether this offsite parking agreement would be adequate to meet the LAMC requirements because there is no information regarding their variance request and whether it will include carpool areas. Given the lack of discussion regarding the offsite parking agreement throughout the MND, it seems the MND concludes that all parking-related requirements are met if the magic words "offsite agreement for parking" are included. The City cannot rely on such conclusory statements to determine whether significant impacts will exist as to Transportation.

Second, according to the Transportation Study, provided as Appendix G to the MND, the Project is expected to generate approximately 732 average daily vehicle trips.¹³⁰

¹²⁸ MND, p. 147; Shaw comment letter, p.2.

¹²⁹ LAMC section 12.26.J.

¹³⁰ MND Appendix G, p.32.
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Table 6
Project Weekday Trip Generation Summary¹

Land Use	ITE Code	Intensity ²	Average Weekday	AM Peak Hour			PM Peak Hour		
				In	Out	Total	In	Out	Total
Trip Generation Rates									
Hotel	310	1 rm	8.36	50%	41%	0.47	51%	46%	0.60
Trip Generation Summary									
Description	Size	Average Weekday	AM Peak Hour			PM Peak Hour			
			In	Out	Total	In	Out	Total	
PROPOSED USE									
Lodging									
Hotel	103 rm	881	28	20	48	32	30	62	
15% Transit/Walk Adjustment ³			(129)	(4)	(3)	(7)	(5)	(4)	(9)
Proposed Project Trips			732	24	17	41	27	26	53

As such, SWAPE explains that the model for the proposed land uses should have included trip rates that reflect the number of average daily operational vehicle trips anticipated. However, a review of the CalEEMod output files demonstrates that the “Rendon Hotel Project” model includes only 494.40, 495.43, and 360.50 weekday, Saturday, and Sunday average vehicle trips, respectively.¹³¹

Land Use	Average Daily Trip Rate		
	Weekday	Saturday	Sunday
Hotel	494.40	495.43	360.50
Total	494.40	495.43	360.50

As SWAPE explains, the weekday, Saturday, and Sunday trip numbers are underestimated by approximately 238, 237, and 372 trips, respectively. As such, SWAPE concludes that the trip rates inputted into the proposed land-use models are underestimated and inconsistent with the information provided by the MND.

These inconsistencies undermine the MND’s conclusions, as CalEEMod uses the operational vehicle trip rates to calculate the emissions associated with the Project’s operational on-road vehicles.¹³² Thus, by including underestimated operational vehicle trip rates, SWAPE concludes that the model underestimates the

¹³¹ MND, Appendix A, pp. 21, 46

¹³² “CalEEMod User Guide.” CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 35; SWAPE comments, page 6.
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Project's mobile-source operational emissions and should not be relied upon to determine Project significance.

Third, SWAPE's review of the CalEEMod output files demonstrates that the "Rendon Hotel Project" model includes several manual changes to the default operational vehicle trip types and lengths (see excerpt below) (Appendix A, pp. 5, 30).

Table Name	Column Name	Default Value	New Value
tblVehicleTrips	CC_TL	8.40	6.77
tblVehicleTrips	CC_TTP	61.60	100.00
tblVehicleTrips	CNW_TL	6.90	0.00
tblVehicleTrips	CNW_TTP	19.00	0.00
tblVehicleTrips	CW_TL	16.60	0.00
tblVehicleTrips	CW_TTP	19.40	0.00

As SWAPE explains, the MND's emissions modeling assumes that 100% of the Project's trips would be commercial to the customer ("C-C") with a trip length of 6.77 miles, without explanation, as required by the CalEEMod User's Guide.¹³³ SWAPE determines that, according to the "User Entered Comments and Non-Default Data" table, the justification provided for these changes is: "Trip rates adjusted based on LADOT VMT Calculator provided by Traffic Consultant."¹³⁴

However, SWAPE concludes that these changes remain unsupported for two reasons. First, while the justification provided by the "User Entered Comments and Non-Default Data" table addresses the revisions to the operational vehicle trip rates, it fails to address the revised operational vehicle trip types or lengths. Second, the MND and associated appendices fail to mention or substantiate the revised operational vehicle trip types and lengths whatsoever.¹³⁵

These unsubstantiated changes render the MND's emissions modeling unsupported. As SWAPE explains, CalEEMod uses the operational vehicle trip types and lengths to calculate the emissions associated with the Project's

¹³³ "CalEEMod User Guide." CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 2, 9.

¹³⁴ MND Appendix A, pp. 4, 29.

¹³⁵ SWAPE comments, p. 7.

operational on-road vehicles.¹³⁶ By including unsubstantiated changes to the default operational vehicle trip types and lengths, SWAPE concludes that the MND's emissions modeling may underestimate the Project's mobile-source operational emissions and should not be relied upon to determine the significance of the Project's operational vehicle emissions.

The MND lacks substantial evidence to support its conclusion that the Project will result in less than significant transportation impacts. By contrast, there is substantial evidence supporting a fair argument that the MND underestimates and fails to properly mitigate transportation impacts on the Project Site.

H. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Land Use Impacts

1. The MND Fails to Establish Consistency With Applicable Zoning Regulations

The MND fails to analyze the Project's consistency with mandatory requirements under Land Use and Zoning Requirements Zoning Information-2784. The Project has five separate applicable zoning information is attached to its site: ZI-2353, ZI-2487, ZI-2488, ZI-2358, and ZI-2129, but only references four of these five.¹³⁷ The MND fails to include a discussion of ZI-2487 City Center/Central Ind. Dev. Guidelines & Controls for Residential Hotels and how the Project meets these requirements and particularly the DFD as noted in ZI-2487. The DFD prohibits the demolition, rehabilitation, or conversion of Residential Hotel Unit(s), or the construction of any new development on the site of a destroyed or demolished Residential Hotel unless the applicant complies with the provisions of the DFD.¹³⁸

Where a local or regional policy of general applicability, such as an ordinance, or in this case a zoning information is adopted to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment.¹³⁹ Any inconsistencies between a proposed project and

¹³⁶ "CalEEMod User Guide." CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 35.

¹³⁷ MND, p. 15; See also MND, pp.125-133.

¹³⁸ Los Angeles Zoning Information, ZI-2487, available at: <http://zimas.lacity.org/documents/zoneinfo/ZI2487.pdf>.

¹³⁹ *Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903. 5078-001acp

applicable plans must be discussed in the CEQA document.¹⁴⁰ A Project's inconsistencies with local plans and policies constitute significant impacts under CEQA.¹⁴¹ Given the MND's failure to demonstrate that the Project complies with the DFD currently ZI-2487 conflicts with the Project.

2. The MND Fails to Demonstrate Compliance with Land Use Standards for Parking

The MND fails to explain how the Project's proposed Zone Variance for offsite parking will meet all the required land use and planning requirements related to parking. In particular, the MND fails to discuss how the Green Building codes requirements for EV spaces will be met by moving parking offsite. The MND Energy and Transportation sections currently fail to account for EV parking. Combined with the fact that so little is mentioned regarding the Project's proposed offsite parking agreement, the lack of information in the MND makes it impossible to tell whether EV parking would be contemplated at all by the offsite agreement.

The LAMC specifies EV spots "at newly constructed hotels and motels shall be 30% of the total number of parking spaces provided, but in no case less than one, for all types of parking facilities."¹⁴² No mention of this requirement is contained in any of the MND's discussions regarding an offsite parking agreement.¹⁴³ The City must provide this basic information so the public and decision-makers can meaningfully assess the Project's potential land use impacts. Further, without this information, there is no support for the Applicant's conclusion that the Project's impacts to Land Use and Planning are less than significant.

The MND's conclusion that the Project will result in less than significant land use and planning impacts, with no mitigation required, is not supported by substantial evidence.¹⁴⁴ And absent mandatory conditions in the offsite parking agreement to require EV parking spaces which comply with LAMC requirements, it

¹⁴⁰ (14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).)

¹⁴¹ (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177; see also, *County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376 (fact that a project may be consistent with a plan, such as an air plan, does not necessarily mean that it does not have significant impacts).)

¹⁴² See LAMC 99.04.106.4.3.1. New Hotels and Motels and MND pp. 81-90.

¹⁴³ MND, p. 133.

¹⁴⁴ See MND, MND p. 134.
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is likely that the Project would be inconsistent with City EV parking requirements, result in significant parking and land use impacts that are not disclosed in the MND.

VI. THE MND'S ANALYSIS OF CUMULATIVE IMPACTS IS INADEQUATE

CEQA requires an evaluation of cumulative impacts, defined as “two or more individual effects which, when considered together, are considerable.”¹⁴⁵ Such impacts may “result from individually minor but collectively significant projects taking place over a period of time.”¹⁴⁶ Lead agencies must consider whether a project’s potential impacts, although individually limited, are cumulatively considerable.¹⁴⁷ “Cumulatively considerable” under CEQA means that “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”¹⁴⁸

CEQA Guidelines section 15130(b)(1) provides two options for analyzing cumulative impacts: (A) list “past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency,” or (B) summarize a “projection contained in an adopted local, regional or statewide plan, or related planning document that describes or evaluates conditions contributing to the cumulative effect.”¹⁴⁹ “When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project’s incremental contribution to the cumulative effect is not cumulatively considerable.”¹⁵⁰

This analysis necessarily requires the identification of other projects that will be constructed and/or operating over the same time period as the subject project and the analysis of these projects together with the project being reviewed. The MND fails to analyze the impacts the Project will have when considered with the more

¹⁴⁵ 14 C.C.R. § 15355.

¹⁴⁶ 14 C.C.R. § 15355(b).

¹⁴⁷ PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

¹⁴⁸ CEQA Guidelines §15064(h)(1).

¹⁴⁹ 14 C.C.R. § 15130(b)(1).

¹⁵⁰ *Id.*; *see id.* § 15130(a) (stating that the lead agency shall describe its basis for concluding that an incremental effect is not cumulatively considerable).

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than 21 other projects within the vicinity that are planned, have been completed, or are under construction.¹⁵¹

A. The MND Fails to Disclose, Analyze, and Mitigate Potentially Significant Cumulative Impacts to Air Quality, GHG emissions, and Transportation

The MND incorrectly concludes that the Project's cumulative air quality impacts are insignificant because they are incrementally minor.¹⁵² A CEQA document is required to disclose a significant cumulative impact "when the project's incremental effect is cumulatively considerable."¹⁵³ The MND finds the Project's cumulative impacts from construction and operational emissions to be insignificant simply because the Project's individual emissions (i.e. its incremental effect) fall below SCAQMD localized and regional significance thresholds.¹⁵⁴ However, the MND fails to take the second step required in the cumulative impacts analysis, which is to compare the Project's individual emissions with those of other reasonably foreseeable cumulative projects to determine whether the increase in emissions caused by the Project will cause cumulatively considerable increases in the specific pollutants emitted by the Project.

The MND states:

Therefore, according to the SCAQMD, individual development projects that generate construction or operational emissions that exceed the SCAQMD recommended daily thresholds for project-specific impacts would also cause a cumulatively considerable increase in emissions for those pollutants for which the Basin is in non-attainment. Thus, as discussed in response to Checklist Question III (c) above, because the construction-related and operational daily emissions associated with Proposed Project would not exceed the SCAQMD's recommended thresholds, these emissions associated with the Proposed Project would not be cumulatively

¹⁵¹ MND, pp. 60-70.

¹⁵² MND, pp. 60-70.

¹⁵³ 14 CCR § 15130(a).

¹⁵⁴ MND, pp.70-71.

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considerable. Therefore, cumulative air quality impacts would be less than significant.¹⁵⁵

The MND identifies 21 others recently approved or under-construction “Related Projects” that are in the direct vicinity of the Project site.¹⁵⁶ However, the “Cumulative Impacts” discussion in the MND’s Air Quality section fails to mention any of these projects and fails to make any attempt to compare the Project’s emissions with those of the other Related Projects. The result is a complete dismissal of the Project’s cumulative air quality impacts by claiming that they are a “drop in a bucket” compared with other existing regional impacts. This approach has been rejected by the Courts and fails to comply with CEQA’s requirement that a project mitigate impacts that are “cumulatively considerable.”¹⁵⁷

In *Friends of Oroville*, the City of Oroville prepared an EIR for a retail center project. The EIR failed to analyze the project’s cumulative contribution to significant GHG impacts by concluding, without analysis, that the project’s “miniscule” GHG emissions were insignificant in light of the state’s cumulative, state-wide GHG emissions problem. The EIR had concluded that a further analysis of the project’s GHG impacts would result in “applying a meaningless, relative number to determine an insignificant impact.”¹⁵⁸ The court of appeal rejected what amounted to an outright dismissal of the City’s obligation to analyze the retail center’s cumulative GHG impacts.¹⁵⁹

Similarly, in *Kings County Farm Bureau v. City of Hanford*,¹⁶⁰ the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for PM10 and ozone, the City failed to incorporate mitigations for the project’s cumulative air quality impacts from project emissions because it concluded that the Project would contribute “less than one percent of area emissions for all criteria pollutants.”¹⁶¹ The city reasoned that, because the project’s air emissions were small in comparison to existing air quality problems, that this necessarily

¹⁵⁵ MND, pp.70-71

¹⁵⁶ MND, pp. 45-50.

¹⁵⁷ PRC § 21083(b)(2); 14 CCR § 15130; *Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 721.

¹⁵⁸ 219 Cal. App. 4th at 841-42.

¹⁵⁹ *Id.*

¹⁶⁰ (1990) 221 Cal. App. 3d 692, 721.

¹⁶¹ *Id.* at 719.

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rendered the project's "incremental contribution" minimal under CEQA. The court rejected this approach, finding it "contrary to the intent of CEQA."

By contrast, a lead agency must find that a project may have a significant effect on the environment and must therefore require an EIR if the project's potential environmental impacts, although individually limited, are cumulatively considerable.¹⁶² The term "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."¹⁶³ The SCAQMD CEQA Guidelines similarly explain that "[w]hile one insignificant project may not affect air quality, the cumulative effect of numerous smaller projects may." To address this problem, SCAQMD recommends that individual project air emissions "be examined within the scope of the existing setting and that the examination take into account new and planned similar and nearby projects."¹⁶⁴

The City cannot end its cumulative impacts analysis at the same point at which it ended its direct impacts analysis – i.e., when it determines whether or not the project will individually cause significant air emissions. That is not the intent of the cumulative impacts' analysis. Rather, the City must attempt to determine whether the Project's emissions, when combined with other similar emissions from other projects, may be significant. Under CEQA, if an adjacent project has significant air emissions, but the proposed project does not, the proposed project may still be considered to have significant cumulative impacts if its own emissions contribute to a cumulative exceedance of a particular pollutant.¹⁶⁵ The same is true for projects which may have individually insignificant impacts, but which, when combined, result in a significant impact.¹⁶⁶ The MND fails to undertake that analysis at all.

¹⁶² PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

¹⁶³ PRC § 21083(b)(2).

¹⁶⁴ See excerpts from SCAQMD Air Quality Handbook, p. 7-3, attached hereto as Exhibit H, available at: http://www.energy.ca.gov/sitingcases/ivanpah/documents/others/2009-08-12_Attachemt_AQ1-1_CEQA_Air_Quality_Handbook_TN-47534.PDF; SCAQMD discussion of currentness of Air Quality Handbook, at <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook>.

¹⁶⁵ PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3), 15130(a).

¹⁶⁶ *Id.*

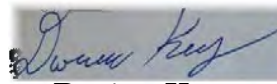
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VII. CONCLUSION

There is substantial evidence supporting a fair argument that the Project may result in potentially significant adverse impacts that were not identified in the MND, and thus have not been adequately analyzed or mitigated. We urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing a legally adequate EIR to address the potentially significant impacts described in this comment letter and the attached letters from SWAPE and Mr. Shaw. This is the only way the City and the public will be able to ensure that the Project's significant environmental impacts are mitigated to less than significant levels.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darien Key", is written over a light blue rectangular background.

Darien Key

DKK:acp
Attachment