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Re: **Comments on the Sustainable Communities Environmental Assessment – Lucia Park Project (Case Nos. PDR 2119308, PDA1806045) (SCH: 2022010297)**

Dear Ms. Zemaitaitis and Mr. Lanzafame:

We are writing on behalf of **Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”)** to provide comments to the City of Glendale (“City”) on the Sustainable Communities Environmental Assessment<sup>1</sup> (“SCEA”) prepared for the Lucia Park Project, Case Nos. PDR 2119308, PDA1806045, SCH 2022010297 (“Project”) pursuant to the California Environmental Quality Act (“CEQA”)<sup>2</sup> proposed by Cimmarusti Holdings, LLC (“Applicant”).

The Project proposes the demolition of the existing parking structure and two-story commercial building fronting Maryland Place located at 625 N. Maryland Avenue and construction of a new 294-unit, 24-story multi-family residential building on a 63,760 SF (1.48 acre) project site zoned DSP Gateway District. The Project will be located at 620 North Brand Blvd and 625 North Maryland Avenue in Glendale, adjacent to State Route 134 (“SR 134”). The proposed Floor Area Ratio

2-1

<sup>1</sup> City of Glendale, Draft Sustainable Communities Environmental Assessment for The Lucia Park Project (January 2022) available at <https://ceqanet.opr.ca.gov/2022010297>

<sup>2</sup> Pub. Resources Code (“PRC”) §§ 21000 *et seq.*  
6000-006j

March 10, 2022

Page 2

("FAR") is 7.25 and the building height is 266 feet. The Project includes 373 subterranean parking spaces for the residential use and 129 above-ground, replacement parking spaces for the existing commercial bank building, as well as a publicly accessible open space plaza fronting Brand Boulevard and residential amenity spaces throughout the project. No changes are proposed to the existing commercial bank building at 620 N. Brand Boulevard. The building was identified as a potential historic resource in the 2019 South Glendale Historic Resources Survey and is therefore considered a historic resource under CEQA. The Applicant has also requested a Development Agreement to secure a six-year entitlement period for the project and to lock in the current Development Impact Fees.

2-1

The proposed Project requires discretionary approval of Design Review pursuant to Glendale Municipal Code ("GMC") Chapter 30.47, and a Development Agreement.

## I. INTRODUCTION

The SCEA prepared for the Project is significantly flawed and does not comply with the requirements of CEQA. Moreover, the City lacks substantial evidence to support the City's conclusion that the Project will result in less than significant impacts. In addition, substantial evidence shows that the Project would result in significant impacts on air quality, public health, and noise. The City may not approve the Project until the City prepares a sustainable communities environmental impact report ("SCEIR") that adequately analyzes the Project's significant and potentially significant impacts and incorporates all feasible mitigation measures to reduce those impacts to less than significant levels.

2-2

We prepared these comments with the assistance of air quality expert James Clark, Ph.D., and noise expert Derek Watry. Dr. Clark and Mr. Watry's technical comments and curriculum vitae are attached hereto as Exhibit A<sup>3</sup> and Exhibit B<sup>4</sup> respectively and are fully incorporated herein.

<sup>3</sup> **Exhibit A** Dr. James Clark, Comments on Draft Sustainable Communities Environmental Assessment (SCEA) For Stage II Final Design Review Case No. PDR 2119308, Development Agreement Case No. PDA1806045 (March 3, 2022).

<sup>4</sup> **Exhibit B** Derek Watry, Lucia Park Project Glendale, California Review and Comment on SCEA Noise Analysis (March 2, 2022).

6000-006j

March 10, 2022

Page 3

We urge the City to reject the SCEA and direct staff to prepare an SCEIR to evaluate the Project's unmitigated, significant and potentially significant impacts.

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## II. 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 Glendale.

Individual members of CREED LA and its member organizations include City of Glendale residents Bryan Gonzalez, Jose Carmen Cortez, Daniel Torres, Loren Brown, and Axel Brutz. These individuals live, work, recreate, and raise their families in the City of Glendale 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.

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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. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

6000-006j

March 10, 2022

Page 4

### III. LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report (“EIR”) (except in certain limited circumstances).<sup>5</sup> The EIR is the very heart of CEQA.<sup>6</sup> “The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”<sup>7</sup>

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.<sup>8</sup> “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR “protects not only the environment but also informed self-government.”<sup>9</sup> 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.”<sup>10</sup>

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.<sup>11</sup> The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”<sup>12</sup> If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”<sup>13</sup>

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<sup>5</sup> See, e.g., CEQA § 21100.

<sup>6</sup> *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

<sup>7</sup> *Comtys. for a Better Env’ v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 (“*CBE v. CRA*”).

<sup>8</sup> 14 CCR § 15002(a)(1).

<sup>9</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

<sup>10</sup> *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>11</sup> 14 CCR § 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

<sup>12</sup> 14 CCR § 15002(a)(2).

<sup>13</sup> CEQA § 21081; 14 CCR § 15092(b)(2)(A) & (B).

6000-006j

March 10, 2022  
Page 5

A Transit Priority Project (“TPP”) is a type of CEQA project that was created by Senate Bill 375. CEQA Section 21155 sets forth the requirements for a project to qualify as a TPP, including consistency with the general use designations, density, building intensity, and applicable policies specified for the project area in an approved Sustainable Communities Strategy, as well as minimum density and residential requirements and proximity to a major transit stop or transit corridor.<sup>14</sup>

A TPP may be reviewed using a Sustainable Communities Environmental Assessment (“SCEA”) or a Sustainable Communities Environmental Impact Report (“SCEIR”), two forms of CEQA documents that were established by SB 375.<sup>15</sup> The goal of this streamlined review is not to undercut or circumvent CEQA’s requirements, but to provide incentives for TPPs that are consistent with a larger effort to reduce greenhouse gas emissions by providing a streamlined channel for such projects. Thus, the SCEA or SCEIR must comply with CEQA’s informational goal, as well as with CEQA’s goal to reduce or avoid adverse environmental impacts when feasible.

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An SCEA must include:

1. An Initial Study that:
  - a. identifies all significant or potentially significant impacts of the TPP, except those not required for review under 21159.28<sup>16</sup>
  - b. Identifies any cumulative effects that have been adequately addressed and mitigated in prior applicable and certified EIRs;
2. Measures that either avoid or mitigate to a level of insignificance all potentially significant or significant effects of the project<sup>17</sup>

The SCEA must be circulated for a 30-day notice and comment period, and notice must be provided as required for an EIR, pursuant to Public Resources Section 21092.<sup>18</sup> The lead agency must consider all comments received,<sup>19</sup> and can

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<sup>14</sup> CEQA § 21155(a).

<sup>15</sup> CEQA §§ 21155.2, 21155.3.

<sup>16</sup> *Id.* Pursuant to Pub. Resources Code, section 21159.28, the SCEA need not analyze (1) growth inducing impacts or (2) any specific or cumulative impacts from cars and light duty truck trips generated by the project on global warming or the regional transportation network.

<sup>17</sup> Pub. Resources Code, § 21155.2 (b).

<sup>18</sup> *Id.*; Pub. Resources Code, section 21092 also requires that all materials referred to or relied upon in the environmental review document be made available for the full public comment period.

<sup>19</sup> *Id.*

6000-006j

March 10, 2022  
Page 6

only approve the SCEA after holding a public hearing, and finding that all potentially significant impacts have been identified and analyzed, and mitigation measures have been implemented to reduce the Project's significant effects to a level of insignificance.<sup>20</sup> The lead agency's decision will be reviewed under the substantial evidence standard.<sup>21</sup>

The lead agency shall conduct the public hearing, or a planning commission may conduct the public hearing, if local ordinances permit direct appeal of the Planning Commission's decision for a fee of \$500.00 or less.<sup>22</sup>

Here, the City must make the following findings in order to determine that the Project complies with the requirements of CEQA for using an SCEA pursuant to PRC Section 21155.2(b):

1. The proposed Project is consistent with the general use designations, density, building intensity, and applicable policies specified for the project area in the Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS") prepared by the Southern California Association of Governments ("SCAG");
2. The State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted SCAG's determination that the sustainable communities strategy adopted by SCAG in the 2020–2045 RTP/SCS would, if implemented, achieve the greenhouse gas emission reduction targets;
3. The proposed Project qualifies as a transit priority project pursuant to PRC Section 21155(b);
4. The proposed Project is a residential or mixed-use project as defined by PRC Section 21159.28(d);

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<sup>20</sup> Pub. Resources Code, § 21152.2(b)(5).

<sup>21</sup> Pub. Resources Code, § 21155.2(b)(7); *see also Sacramento for Fair Planning v. City of Sacramento* (2019) 37 Cal. App. 5th 698, 722.

<sup>22</sup> Pub. Res. Code, § 21155.2(b)(6).

6000-006j

March 10, 2022  
Page 7

5. The proposed Project incorporates all relevant and feasible mitigation measures, performance standards, or criteria set forth in prior environmental reports, including the RTP/SCS Program Environmental Impact Report;

6. All potentially significant or significant effects required to be identified and analyzed pursuant to CEQA have been identified and analyzed in an initial study; and

7. The proposed Project, as mitigated, either *avoids or mitigates to a level of insignificance all potentially significant or significant effects of the proposed Project required to be analyzed pursuant to CEQA.*<sup>23</sup>

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The City is not excused from analyzing the air quality, public health, and noise impacts of the Project by relying on an SCEA. While Section 21155 allows a lead agency to exclude analysis of the Project's GHG and transportation cumulative impacts, the Project's other impacts must undergo a full analysis, and the SCEA must identify and analyze all potentially significant impacts from the Project and implement mitigation to reduce impacts to less than significant levels. In this case, the City failed to conduct a proper analysis of the Project's noise, air quality, and public health impacts. Furthermore, the SCEA fails to mitigate the significant effects of the Project rendering the SCEA incomplete.

#### IV. THE SCEA FAILS TO ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS

An SCEA must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.<sup>24</sup> An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>25</sup>

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Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.<sup>26</sup> Challenges to an agency's failure to

<sup>23</sup> Pub. Resources Code § 21155.2(b) (emphasis added).

<sup>24</sup> 14 CCR § 15064(b).

<sup>25</sup> *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

<sup>26</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236. 6000-006j

March 10, 2022  
Page 8

proceed in the manner required by 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.<sup>27</sup> In reviewing challenges to an agency’s approval of an environmental document based on a lack of substantial evidence, the court will ‘determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements.’<sup>28</sup>

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Even when the substantial evidence standard is applicable to agency decisions to certify an environmental document and approve a project, reviewing courts will not ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.’<sup>29</sup>

**A. The City Failed to Provide Access to Documents Relied Upon in the SCEA**

Despite multiple written requests, the City declined to provide CREED LA with the unlocked air quality analysis modeling files used to perform the Project’s Health Risk Assessment (“HRA”), including the American Meteorological Society/Environmental Protection Agency Regulator Model (“AERMOD”) files. This is a violation of CEQA’s requirement that all documents referenced or relied upon in an SCEA be made available for public review during the CEQA public comment period.<sup>30</sup>

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CREED LA submitted several letters during the public comment period requesting the production of the AERMOD input files, so that Dr. Clark could review the accuracy of the air modeling for the Project.<sup>31</sup> The City expressly

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<sup>27</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>28</sup> *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

<sup>29</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355.

<sup>30</sup> PRC §§ 21092(b)(1), 21155.2(b)(3).

<sup>31</sup> Letter from ABJC, Request for Immediate Access to Documents Referenced in the Sustainable Communities Environmental Assessment – Lucia Park Project (Case Nos. PDR 2119308, PDA1806045) (January 3, 2022); Letter from ABJC, Request for Extension of CEQA Review Period for the Sustainable Communities Environmental Assessment – Lucia Park Project (Case Nos. PDR 2119308, PDA1806045) (February 8, 2022); letter from ABJC, Second Request for Immediate Access 6000-006j



March 10, 2022  
Page 9

declined to provide access to the unlocked emissions files, based on an assertion that the citations and assumptions used in the SCEA’s air modeling calculations were provided in a manner that allows review and evaluation by a technical practitioner.<sup>32</sup> This is incorrect. Without access to the input files, Dr. Clark was forced to recreate the City’s HRA modeling based on the scattered information provided in Appendix B, as described below.

The City’s failure to provide access to the SCEA’s air pollution emissions modeling files violates CEQA. A CEQA document may not rely on missing information because it “must contain facts and analysis, not just the bare conclusions of a public agency.”<sup>33</sup> Documents held by the lead agency, as well as by its outside consultant, are treated as being in the agency’s possession and are required to be disclosed in response to record request and included in the CEQA record for a project if the agency relies on the studies to support the project’s CEQA review.<sup>34</sup> In such instances, the agency is deemed to have direct or constructive possession of that evidence.<sup>35</sup> In this case, the CalEEMod input files relied on in SCEA Appendix A and the unlocked AERMOD input files relied on in SCEA Appendix B are used to support the SCEA’s significance conclusions regarding the Project’s air quality and public health impacts. The City therefore has a duty to produce these files to CREED LA and any other requesting members of the public, as part of the CEQA public review period on the SCEA.

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**B. The SCEA’s Health Risk Analysis Is Inaccurate, Out-of-Date, and Unsupported**

Dr. Clark reviewed the modeling assumptions used in SCEA Appendix B, and concludes that the City’s modeling suffers from major flaws which render its significance conclusions unsupported.

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to Project Emissions Data for Sustainable Communities Environmental Assessment – Lucia Park Project (Case Nos. PDR 2119308, PDA1806045) (February 16, 2022).

<sup>32</sup> **Exhibit C:** Email from City of Glendale, Response to Re: Second Request for Immediate Access to Project Emissions Data for Sustainable Communities Environmental Assessment (February 18, 2022)

<sup>33</sup> *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.

<sup>34</sup> *Consolidated Irrig. Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 710; *See also City of San Jose v Superior Court* (2017) 2 Cal.App.5th 608, 623.

<sup>35</sup> *Id.*

6000-006j

March 10, 2022  
Page 10

As a preliminary matter, Dr. Clark notes in his comments that, according to Appendix B, the air dispersion modeling was conducted using AERMOD version 10.0.1.<sup>36</sup> According to the July 2021 AERMOD Implementation Guide from U.S. EPA is the current version of AERMOD is version 21112.<sup>37</sup> Dr. Clark explains that the modeling software utilized by the City is more than a decade old and lacks modeling capability for many relevant emissions factors. For example, Dr. Clark explains that the software lacks the capability to import background concentrations, calculate hourly emissions using multi-year assessments, or process large postfiles.<sup>38</sup> Dr. Clark suggests that the City may be referring to version 10.0.1 of the *graphical user interface* used to run AERMOD.<sup>39</sup> Even if true, Dr. Clark explains that that version 10.0.1 does not correct the SCEA's modeling errors, and demonstrates a lack of understanding of the modeling program.

2-7

Despite the City's clear misunderstanding of the AERMOD program, Dr. Clark was able to independently identify the geographic location of all of the sources included in the mobile source dispersion model.<sup>40</sup> The sources are shown below as red volume boxes in the figure below.

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<sup>36</sup> SCEA, Appendix B, p. 18.

<sup>37</sup> U.S. EPA. 2021. AERMOD Implementation Guide. Dated July, 2021. Pg. 1.

[https://gaftp.epa.gov/Air/aqmg/SCRAM/models/preferred/aermod/aermod\\_implementation\\_guide.pdf](https://gaftp.epa.gov/Air/aqmg/SCRAM/models/preferred/aermod/aermod_implementation_guide.pdf)

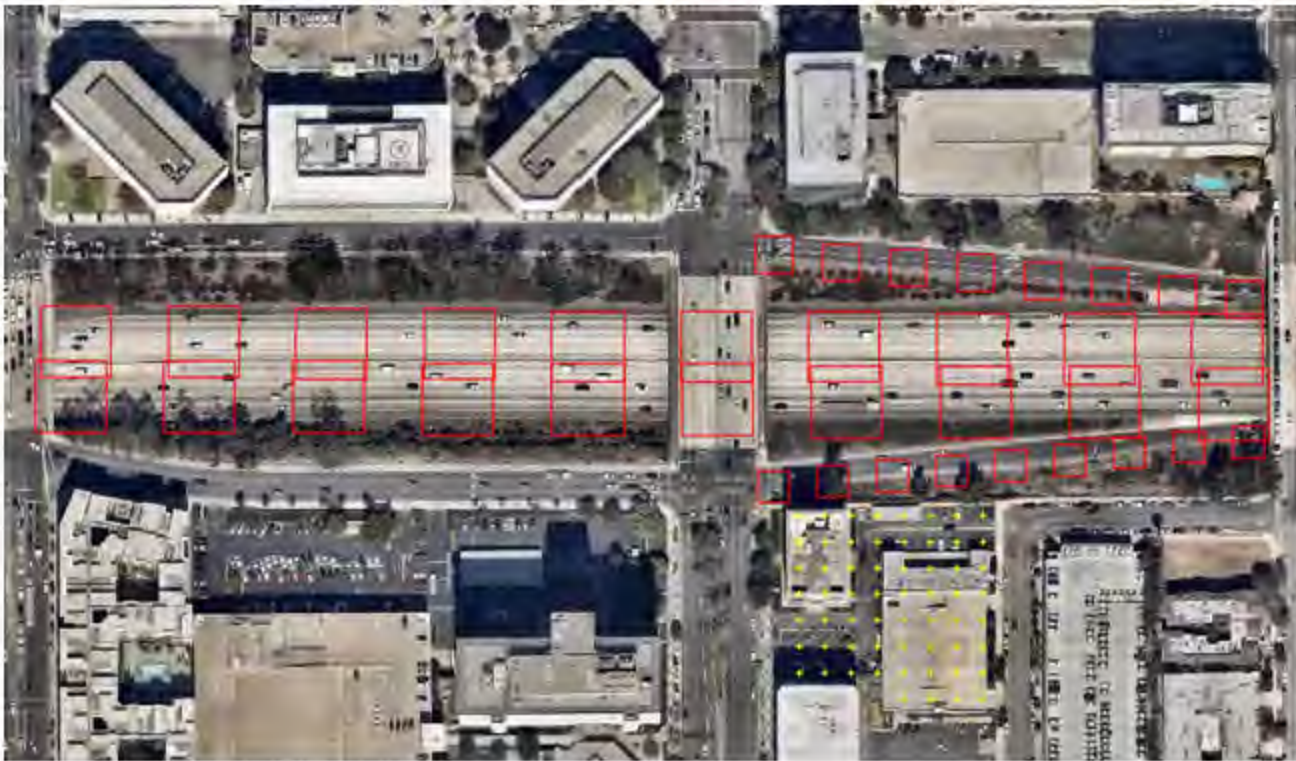
<sup>38</sup> Clark Comments, p. 2.

<sup>39</sup> Clark Comments, p. 3.

<sup>40</sup> Clark Comments, p. 3.

6000-006j

March 10, 2022  
 Page 11



2-7

Dr. Clark explains that the yellow crosses indicate the receptors at ground-level across the project site.<sup>41</sup> According to Appendix B, diesel vehicle traffic was modeled as a line source comprised of separate volume sources along the stretch of SR-134.<sup>42</sup> Ten sources are identified on the east bound lanes of State Route 134.<sup>43</sup>

ID	X	Y	CO (1-
<b>EB SR-134</b>			
L0000782	384059.9	3780196	1
L0000783	384109	3780196	1
L0000784	384158.2	3780196	1
L0000785	384207.3	3780195	1
L0000786	384256.5	3780195	1
L0000787	384305.6	3780195	1
L0000788	384354.7	3780194	1
L0000789	384403.9	3780194	1
L0000790	384453	3780194	1
L0000791	384502.2	3780193	1

Ten sources are identified on the west bound lanes of State Route 134.<sup>44</sup>

<sup>41</sup> Clark Comments, p. 3.  
<sup>42</sup> SCEA, Appendix B, p. 18.  
<sup>43</sup> Clark Comments, p. 3.  
<sup>44</sup> Clark Comments, p. 3  
 6000-006j



March 10, 2022  
 Page 12

<b>WB SR-134</b>			
L0000772	384499.7	3780214	1
L0000773	384451.1	3780214	1
L0000774	384402.4	3780214	1
L0000775	384353.8	3780215	1
L0000776	384305.1	3780215	1
L0000777	384256.5	3780215	1
L0000778	384207.9	3780216	1
L0000779	384159.2	3780216	1
L0000780	384110.6	3780217	1
L0000781	384061.9	3780217	1

Eight sources are identified from the off-ramp to Brand Avenue from west bound lanes of State Route 134.<sup>45</sup>

<b>Off-Ramp to Brand from WB SR-134</b>			
L0001114	384506.2	3780233	4
L0001115	384480.7	3780235	4
L0001116	384455.1	3780238	4
L0001117	384429.5	3780240	4
L0001118	384403.9	3780243	4
L0001119	384378.3	3780245	4
L0001120	384352.7	3780247	4
L0001121	384327.1	3780250	4

Finally, eight sources are identified as using the on-ramp to east bound lanes of State Route 134.<sup>46</sup>

<b>On-Ramp to EB SR-134 from Brand</b>			
L0001105	384326.9	3780162	1
L0001106	384349.5	3780164	1
L0001107	384372.1	3780166	1
L0001108	384394.7	3780168	1
L0001109	384417.3	3780170	1
L0001110	384439.9	3780172	1
L0001111	384462.5	3780175	1
L0001112	384485.1	3780177	1
L0001113	384507.7	3780179	1

Dr. Clark proceeded to use the diesel exhaust emissions parameters as detailed in Appendix B. When recreating the model using the City’s data, Dr. Clark found that Appendix B describes the use of “digital elevation model (DEM) data for the Pasadena and Mount Wilson 7.5-minute quadrangles obtained through the

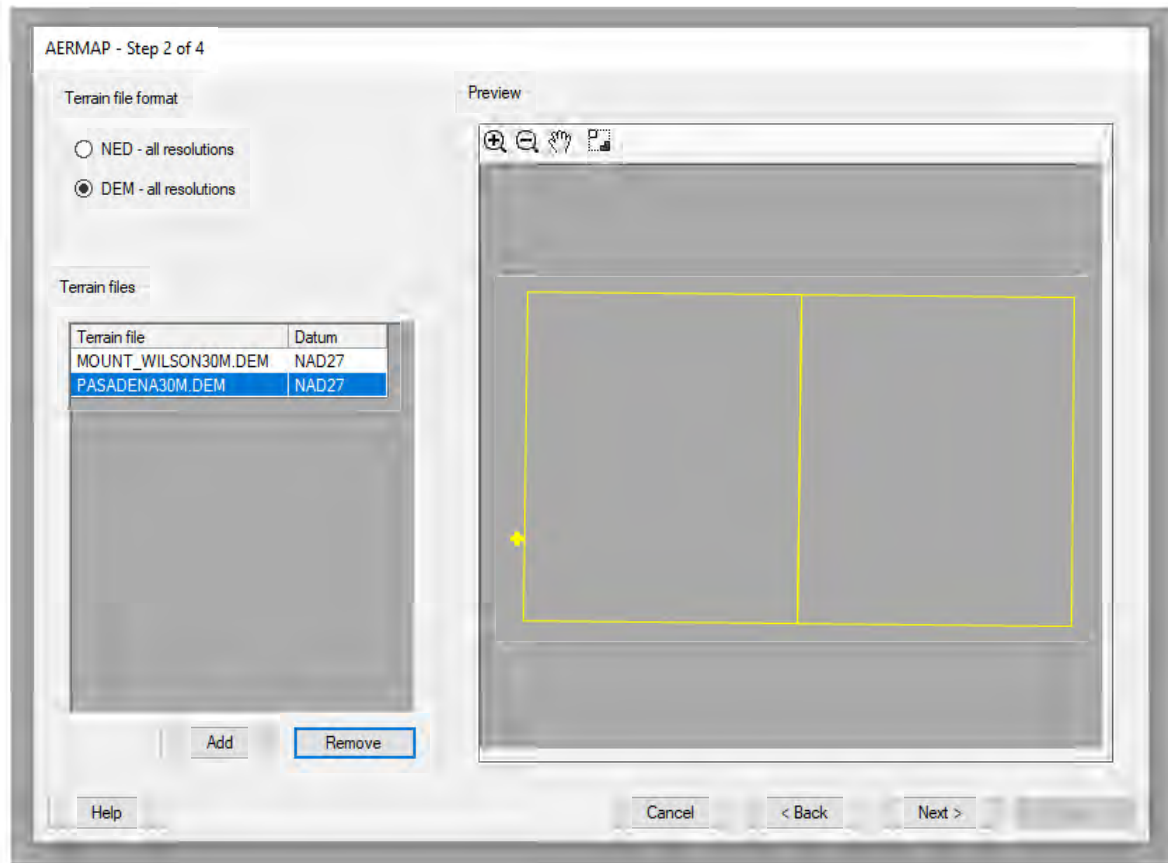
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<sup>45</sup> Clark Comments, p. 4.  
<sup>46</sup> Clark Comments, p. 4.  
 6000-006j

March 10, 2022  
Page 13

AERMOD program.”<sup>47</sup> As Dr. Clark points out in his comments, AERMOD does not have a component that stores 7.5-minute quadrangles. Quadrangles can be obtained through the California Air Resources Board’s (“CARB”) HARP Digital Elevation Model Files.<sup>48</sup>

Despite this error, Dr. Clark was able to download comparable Pasadena and Mt. Wilson DEMs and upload them to the AERMOD model. Upon uploading the DEMs, Dr. Clark found that neither of the DEMs were useful because no sources for the model were associated with either DEM rendering them useless for analysis of the Project.<sup>49</sup>



2-7

<sup>47</sup> Clark Comments, p. 5.  
<sup>48</sup> Clark Comments, p. 5.  
<sup>49</sup> Clark Comments, p. 5.  
6000-006j

March 10, 2022  
Page 14

Dr. Clark ultimately found that the only DEM required in the model is the Burbank DEM because no receptors are identified as being present in the Pasadena or Mt. Wilson DEMs.<sup>50</sup> The output from the re-analysis of the impacts from SR-134 are included in Exhibit B to Dr. Clark’s comment letter. As discussed below, Dr. Clark’s analysis demonstrates that the Project has significant health impacts.

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Finally, Appendix B to the SCEA’s Appendix B is labeled “AERMOD Output Sheets”.<sup>51</sup> However, review of the appendix clearly shows that Appendix B to the Health Risk Assessment contains the Emission Inventory from the EMFAC2021 (v 1.0.1) analysis of the Los Angeles region. The City must correctly label the information in the report.

**C. The SCEA Fails to Disclose, Analyze and Mitigate Potentially Significant Air Quality Impacts**

The SCEA fails to disclose and analyze potentially significant impacts of the Project and does not implement all feasible mitigation to reduce those impacts to less than significant levels, in violation of CEQA. The SCEA concludes that no additional project-specific mitigation measures are necessary in order to reduce the Project’s air quality impacts.<sup>52</sup> However, as detailed below, Dr. Clark found potentially significant air quality impacts that are not mitigated through incorporation of the proposed mitigation measures, performance standards, or criteria from prior applicable environmental impact reports including those required under SCAG 2020-2045 RTP/SCS Program EIR; South Glendale Community Plan EIR; and Downtown Specific Plan EIR.

2-8

**1. The SCEA Fails to Disclose and Analyze the Potentially Significant Health Risk from Exposure to Diesel Particulate Matter**

The City performed a Health Risk Assessment (“HRA”) to assess the impact of pollutants on individuals residing at the Project site resulting from exposure to diesel exhaust emissions generated by vehicles on the SR-134 and the on-ramp from Brand Boulevard adjacent to the Project site.<sup>53</sup> The HRA found that the Project

2-9

<sup>50</sup> Clark Comments, p. 5.

<sup>51</sup> SCEA, Appendix B, p. 32.

<sup>52</sup> SCEA, p. 5.0-40.

<sup>53</sup> SCEA, p. 5.0-28.

March 10, 2022

Page 15

would not result in a significant impact with mitigation as it would result in a maximally exposed individual receptor (“MEIR”) of 1.06 in 1,000,000 residents, and 7.55 in 100,000,000 workers.<sup>54</sup> Based on the City’s analysis, the SCEA concludes that the cancer risk for residents at the site would not exceed SCAQMD’s significance criteria of 10 per 1,000,000 million. However, in his review, Dr. Clark discovered that the City’s analysis failed to measure all the potential impacts of the Project and improperly found that the Project will result in a less than significant impact.

Using the input values from the City’s air model, Dr. Clark found that the health impacts to the future residents would be 19.9 in one million, in excess of the SCAQMD threshold of significance of 10 in one million, and substantially higher than the SCEA concludes.<sup>55</sup> Dr. Clark concludes that the impact remains significant, despite the mitigation measures described in the SCEA.<sup>56</sup>

A lead agency’s significance determination must be supported by accurate scientific and factual data.<sup>57</sup> An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>58</sup> These standards apply to an SCEA’s analysis of the air quality 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.<sup>59</sup> 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

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<sup>54</sup> *Ibid.*

<sup>55</sup> Clark Comments, pp. 7-8; SCAQMD, Air Quality Significance Thresholds (2019) <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf>.

<sup>56</sup> Clark Comments, p. 8.

<sup>57</sup> 14 C.C.R. § 15064(b).

<sup>58</sup> *Kings County Farm Bureau*, 221 Cal.App.3d at 732.

<sup>59</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518–522.  
6000-006j

March 10, 2022  
Page 16

health effects.<sup>60</sup> 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.”<sup>61</sup> 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.”<sup>62</sup> CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.<sup>63</sup>

In *Berkeley Jets*, the Court of Appeal held that an EIR must analyze the impacts from human exposure to toxic substances.<sup>64</sup> In that case, the Port of Oakland approved a development plan for the Oakland International Airport.<sup>65</sup> The EIR admitted that the Project would result in an increase in the release of TACs and adopted mitigation measures to reduce TAC emissions, but failed to quantify the severity of the Project’s impacts on human health.<sup>66</sup> The Court held that mitigation alone was insufficient, and that the Port had a duty to analyze the health risks associated with exposure to TACs.<sup>67</sup> As the CEQA Guidelines explain, “[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.”<sup>68</sup>

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.<sup>69</sup> Challenges to an agency’s failure to proceed in the manner required



2-9

<sup>60</sup> *Id.* at 507–508, 518–522.

<sup>61</sup> *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

<sup>62</sup> *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).)

<sup>63</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518–522.

<sup>64</sup> *Berkeley Jets*, 91 Cal.App.4th at 1369–1371.

<sup>65</sup> *Id.* at 1349–1350.

<sup>66</sup> *Id.* at 1364–1371.

<sup>67</sup> *Id.*

<sup>68</sup> 14 C.C.R. § 15003(b).

<sup>69</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.  
6000-006j



March 10, 2022  
 Page 17

by 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.<sup>70</sup> 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.”<sup>71</sup>

Here, the HRA contains substantial errors and omissions which resulted in an inaccurate and incomplete health risk analysis, and an incorrect and unsupported significance determination. A corrected HRA for the Project shows that the Project will result in cancer risk to future residents that exceed the threshold of significance, and requires additional mitigation.

Appendix B to the SCEA states that the building façades facing towards SR-134 freeway and the on-ramp from Brand Boulevard would be nearest to traffic volumes and would be exposed to higher amounts of DPM emissions than those located further away from the road; the cancer risk and chronic hazard indices for the on-site receptors would gradually decrease as their distance from the freeway increases across the Project site.<sup>72</sup> In Table 4 of the Appendix, the text states that the maximum cancer risk from DPM emissions generated by diesel-vehicle travel along SR-134 Freeway for residents was calculated to be 1.06 in one-million.<sup>73</sup> The maximum cancer risk from DPM emissions generated by diesel-vehicle travel along SR-134 Freeway for workers on site was calculated to be 0.0755 in one-million.<sup>74</sup>

2-9

Receptor	Cancer Risk	Chronic Noncancer Hazard Index
Resident MEIR	1.00E-06	0.01
Worker MEIR	7.55E-08	0.01

Note: See Appendix B for calculations.

<sup>70</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>71</sup> *Id.* (internal quotations omitted).

<sup>72</sup> SCEA, Appendix B, p. 13.

<sup>73</sup> SCEA, Appendix B, p. 13.

<sup>74</sup> SCEA, Appendix B, p. 13.

March 10, 2022  
Page 18

Upon re-running the air dispersion model, Dr. Clark found that the annual average ground level concentration of DPM across the Project site was calculated to range from 0.01258 ug/m<sup>3</sup> to 0.02387 ug/m<sup>3</sup>.<sup>75</sup> Dr. Clark then used CARB's HARP Standalone Risk Assessment Tool and determined that the minimum cancer risk from inhalation of DPM emitted from sources on SR-134 and the adjacent roadways is 1.11 x 10<sup>-5</sup> or 11.1 in one million.<sup>76</sup> For the maximum concentration modeled, the cancer risk from inhalation of DPM emitted from sources on SR-134 and the adjacent roadways was calculated to be 1.99 x 10<sup>-5</sup> or 19.9 in one million.<sup>77</sup>

In both scenarios, Dr. Clark's analysis shows that the Project will expose residents to TAC DPM concentrations that result in cancer risk in excess of the SCAQMD threshold of significance of 10 in one million.<sup>78</sup> Dr. Clark's analysis of the Project's air modeling shows a significant impact that the City has failed to disclose and mitigate. The re-analysis of the health risks for the Project from SR-134 are provided in Exhibit C to this letter.

Dr. Clark states in his comments that the SCEA's mitigation measures, including the use of MERV 13 filters in HVAC equipment<sup>79</sup>, will not result in a reduction of the minimum cancer risk for the Project's future residents to less than significant levels because the SCEA would need to include a mitigation measure requiring residents to keep their windows closed over 50% of the time in perpetuity.<sup>80</sup> Dr. Clark notes that the only way to ensure a mitigation measure of this type would be effective would be to ensure that all windows on site were not able to be opened.<sup>81</sup> Additional mitigation measures are necessary in order for the City to reduce the Project's air quality impacts to less than significant levels. The City must correct the HRA and show that the impacts from SR-134 are more significant than was outlined in the draft SCEA in an SCEIR.

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<sup>75</sup> Clark Comments, p. 7.

<sup>76</sup> Clark Comments, p. 7.

<sup>77</sup> Clark Comments, p. 7.

<sup>78</sup> SCAQMD, Air Quality Significance Thresholds (2019) <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf>

<sup>79</sup> SCEA, p. 5.0-32.

<sup>80</sup> Clark Comments, p. 8.

<sup>81</sup> Clark Comments, p. 8.

March 10, 2022  
Page 19

## 2. The SCEA Fails to Disclose and Analyze the Potential Air Quality Impacts from the Use of Backup Generators

The City failed to account for the reasonably foreseeable use of backup generators (“BUG”) during Project operations. Dr. Clark explains that, given the size of the Project, and the need for continuous electrical supply, a BUG must be installed on site.<sup>82</sup> Operational emissions from BUGs due to testing and maintenance along unscheduled events, including but not limited to Public Safety Power Shutoff (“PSPS”) events and extreme heat events must be analyzed by the City.<sup>83</sup>

Extreme heat events are defined as periods where the temperatures throughout California exceed 100 degrees Fahrenheit.<sup>84</sup> The total duration of the PSPS events lasted between 141 hours to 154 hours in 2019.<sup>85</sup> In 2021, the Governor of California declared that during extreme heat events the use of stationary generators shall be deemed an emergency use.<sup>86</sup> The number of Extreme Heat Events is likely to increase in California with the continuing change in climate the State is currently undergoing.<sup>87</sup>

During a PSPS or an extreme heat event, power is expected to come from engines regulated by CARB and California’s 35 air pollution control and air quality management districts (air districts).<sup>88</sup> Additionally, Dr. Clark states that the health effects related to emissions from diesel BUGs are a particular concern during PSPS and extreme heat events.<sup>89</sup>

According to the California Public Utilities Commission (“CPUC”) de-energization report, in October 2019, there were almost **806 PSPS events** (emphasis added) that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers, and the rest were

2-10

<sup>82</sup> Clark Comments, p. 8.

<sup>83</sup> Clark Comments, p. 8.

<sup>84</sup> Governor of California, Proclamation of a State of Emergency (June 17, 2021) available at <https://www.gov.ca.gov/wp-content/uploads/2021/06/6.17.21-Extreme-Heat-proclamation.pdf>

<sup>85</sup> Clark Comments, p. 7.

<sup>86</sup> 17 C.C.R. § 93115.4 sub. (a) (30) (A)(2).

<sup>87</sup> Clark Comments, p. 7.

<sup>88</sup> CARB, 2019, Use of Back-up Engines For Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019) available at [https://ww2.arb.ca.gov/sites/default/files/2019-10/PSPS\\_Back-up\\_Power\\_Guidance.pdf](https://ww2.arb.ca.gov/sites/default/files/2019-10/PSPS_Back-up_Power_Guidance.pdf)

<sup>89</sup> Clark Comments, p. 7.

6000-006j

March 10, 2022  
Page 20

commercial, industrial, medical baseline, or other customers.<sup>90</sup> CARB's data also indicated that on average each of these customers had about 43 hours of power outage in October 2019.<sup>91</sup> Using the actual emission factors for each diesel BUG engines in the air district's stationary BUGs database, CARB staff calculated that the 1,810 additional stationary generators running during a PSPS in October 2019 generated 126 tons of NO<sub>x</sub>, 8.3 tons of particulate matter, and 8.3 tons of DPM.<sup>92</sup>

As Dr. Clark explains in his comments, testing and maintenance of BUGs along with each PSPS or extreme heat event that occurs during the operational phase of the project will result in significant concentrations of DPM to be released that are not accounted for in the City's analysis.<sup>93</sup> In 2021, two extreme heat events were declared.<sup>94</sup> For the June 17, 2021 extreme heat event, the period for which stationary generator owners were allowed to use their BUGs lasted 48 hours.<sup>95</sup> For the July 9, 2021 extreme heat event, the period for which stationary generator owners were allowed to use their BUGs lasted 72 hours.<sup>96</sup> Had the Project been in operation during these two extreme heat events, the Project would have run the BUGs for 120 hours, in addition to the 50 hours of use accounted for in the DEIR's air quality analysis. Furthermore, CARB notes though that the number of Extreme heat events is likely to increase, and thereby PSPS events, with the continuing change in climate that the State is currently undergoing.<sup>97</sup>

While the City is not required to analyze the worst-case scenarios, there is substantial evidence demonstrating that PSPS events and extreme heat events are reasonably foreseeable events which will require the use of the BUGs beyond just 50 hours of routine testing during Project operations. A detailed analysis of the emissions from these additional hours of the BUGs operation should be included in an SCEIR, including an analysis of the extra time the BUGs will need to run to account for extreme heat events and PSPS.

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<sup>90</sup> California Public Utilities Commission ("CPUC"), Emission Impact: Additional Generator Usage associated With Power Outage (January 30, 2020) available at [https://ww2.arb.ca.gov/sites/default/files/2020-01/Emissions\\_Inventory\\_Generator\\_Demand%20Usage\\_During\\_Power\\_Outage\\_01\\_30\\_20.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-01/Emissions_Inventory_Generator_Demand%20Usage_During_Power_Outage_01_30_20.pdf).

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> Clark Comments, p. 8.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> CARB, California's 2017 Climate Change Scoping Plan (November 2017) p. 6. Available at [https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping\\_plan\\_2017.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf) 6000-006j



2-10



March 10, 2022  
Page 21

An SCEIR must be written for the Project that includes an analysis of the additional operation of the BUGs that will occur at the project site that is not accounted for in the current air quality analysis.

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**D. The SCEA Fails Analyze and Mitigate Potentially Significant Noise Impacts**

The SCEA’s review of potential noise impacts from the Project identified potentially significant noise impacts from the Project’s construction. It concludes that all the potentially significant impacts will be mitigated below level of significance.

Noise expert, Derek Watry reviewed the SCEA’s analysis and found that it fails to properly disclose, analyze and mitigate the Project’s potentially significant construction noise impacts.

Mr. Watry states the construction noise analysis for the Project references the Federal Transit Administration (“FTA”) *Transit Noise and Vibration Impact Assessment Manual*.<sup>98</sup> Section 7 of the *FTA Manual* addresses noise and vibration during construction, and, although the *Manual* states expressly that “. . . it is not the purpose of this manual to specify standardized criteria for construction noise impact, the following guidelines can be considered reasonable criteria for assessment”, its methodology and criteria have come into widespread use.<sup>99</sup> Mr. Watry explains that the FTA methodology is commonly completed using the Roadway Construction Noise Model (“RCNM”) published by the Federal Highway Administration (“FHWA”).<sup>100</sup>

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Mr. Watry states that the *FTA Manual* presents two options for assessing construction noise: Option A – General Assessment and Option B – Detailed Assessment. Regarding these options, the *Manual* states:<sup>101</sup>

- A general assessment of construction noise is warranted for projects in an early assessment stage when the equipment roster and schedule are undefined and only a rough estimate of construction noise levels is practical.

<sup>98</sup> Watry Comments, p. 3.

<sup>99</sup> Watry Comments, p. 3.

<sup>100</sup> Watry Comments, p. 3.

<sup>101</sup> Watry Comments, p. 3.

March 10, 2022

Page 22

- A detailed analysis of construction noise is warranted when many noise-sensitive sites are adjacent to a construction project or where contractors are faced with stringent local ordinances or heightened public concerns expressed in early outreach efforts.

The General Assessment makes more conservative assumptions which results in higher noise level estimates, but also has higher criteria.<sup>102</sup> Conversely, the Detailed Assessment makes more realistic assumptions (lower estimates), but has lower criteria.<sup>103</sup>

Here, the SCEA uses the Detailed Assessment prediction methodology, but uses the General Assessment criteria. Upon further investigation, Mr. Watry found that if the City used the Detailed Assessment criteria, it would have concluded that construction noise will cause a significant and unavoidable impact on the neighboring commercial building.<sup>104</sup>

The basis of the General Assessment methodology is that it is based on only the two loudest pieces of equipment and those are assumed to run at full power 100% of the time thereby creating the most noise possible.<sup>105</sup> The Detailed Assessment considers all of the reasonably foreseeable equipment, but accounts for the typical amounts of time that that equipment operates at full power (the “usage factor”).<sup>106</sup> The calculations in the City’s construction noise survey includes five foreseeable pieces of equipment - concrete saw, dozer, tractor, backhoe and front end loader - and their respective usage factors.<sup>107</sup> This is a Detailed Assessment and, as Mr. Watry points out, should use the corresponding criteria.<sup>108</sup>

Mr. Watry applied the appropriate Detailed Assessment criteria to the five pieces of equipment listed in the Project’s noise study and found that the Project’s construction noise will exceed the applicable criterion by 13.9 dBA, resulting in a



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<sup>102</sup> Watry Comments, p. 3.

<sup>103</sup> Watry Comments, p. 3.

<sup>104</sup> Watry Comments, p. 3.

<sup>105</sup> Watry Comments, p. 3.

<sup>106</sup> Watry Comments, p. 3.

<sup>107</sup> SCEA, Appendix D, p. 49.

<sup>108</sup> Watry Comments, p. 3.

March 10, 2022  
Page 23

significant impact.<sup>109</sup> The City must revise its construction noise analysis and present its findings in an SCEIR for public review.

Despite the fact that the SCEA incorrectly concludes that no mitigation would be required for construction noise, it discusses a number of means and methods to reduce construction noise. Mr. Watry states that many of the mitigation measures are not applicable to the Project, while others are not practical, and would therefore not reduce the significant noise impact which he identified to less than significant levels.<sup>110</sup> Mr. Watry explains the inadequacies of many of the Project's mitigation measures, as detailed below:

- “. . . optimal muffler systems on all equipment would reduce construction noise levels by 10 dBA or more”.<sup>111</sup>

Mr. Watry states that the language of this mitigation measure is based on language from *Construction Noise; Specification, Control, Measurement, and Mitigation*. Technical Report E-53, Construction Engineering Research Laboratory, published in April 1975. Construction equipment was not commonly muffled in 1975. However, in the last 47 years mufflers have become standard equipment.<sup>112</sup> The SCEA uses the FHWA Roadway Construction Model which uses source data from modern, muffled equipment, therefore additional noise attenuation from mufflers may be expected.<sup>113</sup>

- “. . . the use of a noise barrier can achieve a 5-dBA noise level reduction when it is tall enough to break the line-of-sight to the receiver.”<sup>114</sup>

Mr. Watry states that while the above statement is technically correct, “the line-of-sight to the receiver” does not apply to the multi-story office buildings that are immediately next to the Project site.<sup>115</sup>



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<sup>109</sup> Watry Comments, p 5.

<sup>110</sup> Watry Comments, p. 5.

<sup>111</sup> SCEA, 5.0-156.

<sup>112</sup> Watry Comments, p. 6.

<sup>113</sup> Watry Comments, p. 6.

<sup>114</sup> SCEA, 5.0-156.

<sup>115</sup> Watry Comments, p. 6.

6000-006j

March 10, 2022

Page 24

- “Modifications such as dampening of metal surfaces or the redesign of a particular piece of equipment can achieve noise reduction of up to 5 dBA.”<sup>116</sup>

Mr. Watry points out that the language quoted in the SCEA is taken out of context.<sup>117</sup> The full quote from the FHWA report cited by the SCEA as the source for this statement is:

Modifications such as dampening of metal surfaces is quite effective in reducing noise due to vibration. Another possibility is the redesign of a particular piece of equipment to achieve quieter noise levels. These modifications can usually only be done by the manufacturer or with factory assistance and can be costly, time consuming, and possibly ineffective in reducing the overall noise levels.<sup>118</sup>

Mr. Watry states that the measure would require contractors to find and use equipment that is demonstrably quieter than equipment that is currently in common use.<sup>119</sup> Because this would require the use of non-standard equipment, the SCEA should substantiate that it, in fact, is a reasonable and feasible, and the specifics of the quieter equipment should be incorporated into the formal mitigation measures of the project.

- “Moving stationary equipment away from sensitive receptors will reduce noise levels at the receptor as every doubling of distance will reduce noise by 4 to 6 dBA.”<sup>120</sup>

This is a correct statement, but, as Mr. Watry observes, the sources of construction noise used in the Noise Study calculations are mobile, not stationary. Therefore, the equipment could not feasibly be moved away from the sensitive receptors as they must be able to move about the site to complete the Project.



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<sup>116</sup> SCEA, 5.0-156.

<sup>117</sup> Watry Comments, p. 6.

<sup>118</sup> FHWA, Special Report - Measurement, Prediction, and Mitigation, Chapter 4 Mitigation (June 28, 2017) [https://www.fhwa.dot.gov/Environment/noise/construction\\_noise/special\\_report/hcn04.cfm](https://www.fhwa.dot.gov/Environment/noise/construction_noise/special_report/hcn04.cfm) Accessed March 7, 2022 (emphasis added).

<sup>119</sup> Watry Comments, p. 6.

<sup>120</sup> SCEA, 5.0-156.

6000-006j



March 10, 2022  
Page 25

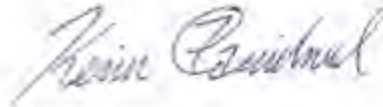
The City must prepare an SCEIR to properly analyze the potentially significant construction noise impacts from the Project, disclose the Project's potentially significant noise impacts, and propose feasible, effective, mitigation measures to reduce the Project's significant impacts.

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**V. CONCLUSION**

There is substantial evidence supporting a fair argument that the Project may result in potentially significant air quality and noise impacts that were not identified in the SCEA, and thus have not been adequately analyzed or mitigated. We urge the City to fulfill its responsibilities under CEQA by withdrawing the SCEA and preparing a legally adequate SCEIR to address the potentially significant impacts described in this comment letter and the attached expert comments. 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.

Sincerely,



Kevin T. Carmichael

KTC:lj1

6000-006j