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VIA EMAIL ONLY

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Re: Agenda Items 10 and 11: 655 Mesquit Project: ENV-2020-6829-EAF CPC-2020-6828-GPA-ZC-HD-SPR-MCUP; VTT-83288-1A

Dear President Millman, Commissioners, Ms. Lamas, Mr. Bertoni, Ms. Escobar:

These comments are submitted on behalf of **Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA")** regarding City Planning Commission ("CPC") Agenda Items 10 and 11 related to the 655 Mesquit Street Project (Case No. CPC-2020-6828-GPA-ZC-HD-SPR-MCUP; Environmental Case No. ENV-2020-6829-EAF; VTT-83288-1A ("Project"), proposed by 655 Mesquit, LLC ("Applicant"). Agenda Item 10 addresses CREED LA's appeal of the determinations made by the Advisory Agency on December 22, 2021, including approval of the Vesting Tentative Tract Map ("VTTM"), VTT-83288-1A. Agenda Item 11 addresses the CPC's consideration of the Project's remaining entitlements.

The City released two separate Staff Reports covering the VTTM appeal and the remaining entitlements less than one week ago, consisting of over 3,200 pages, none of which responded to CREED LA's October 13, 2021 comments on the Mitigated Negative Declaration ("MND") prepared by the City of Los Angeles ("City") for the Project. We had to reach out to City staff separately to request a copy of the City's responses to Comments ("Responses"). The Responses are dated December 13, 2021, demonstrating that they were prepared over a month ago and should have been attached to the Staff Reports.¹

Based upon our review of the Staff Report and Responses,² we continue to conclude that the MND fails to comply with the requirements of CEQA.

¹ See CPC staff report for Agenda Item 10, p. 84, https://planning.lacity.org/plndoc/Staff_Reports/2022/01-19-2022/VTT_83288_1A.pdf#page=84

² We prepared these comments with environmental health and air quality expert Dr. James Clark, Ph.D. See **Attachment A:** Letter from J. Clark re *Appeal of Determinations by the Advisory Agency regarding 655 Mesquit Project* (January 24, 2022) ("Clark Comments").
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The City may not approve the Project until it prepares a legally adequate environmental impact report (“EIR”).³

I. An EIR Is Required Because There Is Substantial Evidence Supporting A Fair Argument That The Project Has Significant, Unmitigated Impacts

A. Substantial Evidence Still Supports a Fair Argument that the MND still has not addressed underlying Air Quality Issues

First, the City states that “the assertion that a detailed Health Risk Assessment (HRA) level analysis is required for the Proposed Project is not correct and is not supported by any adopted regulations or legal requirements under CEQA.”⁴ This statement is unsupported by law and is in direct opposition to the Supreme Court's holding that environmental review documents prepared pursuant to CEQA must analyze the health risk of commercial development projects like this one.⁵ The court explains that the lead agency must “translate the bare numbers provided into adverse health impacts or to understand why such translation is not possible at this time.”⁶ The City still failed to address this deficiency in the MND.

Secondly, the City misconstrued Dr. Clark’s comments regarding backup generators (“BUG”) and the air quality and health risk analysis required. The City states that analysis demonstrating 200 hours of usage would be speculative given the unpredictable nature of power outages. This is incorrect, as Dr. Clark provided substantial evidence demonstrating that it is reasonably foreseeable that the BUG would operate more than the mere 12 hours of testing estimated in the MND and potentially up to 200 hours per year in response to planned and unplanned power outages. The Responses also fail to address the underlying comment. Dr. Clark’s comment addressed the failure to provide any analysis regarding BUG usage during a power outage, which the BUG’s underlying purpose. This lack of analysis is a failure to analyze reasonably foreseeable uses since substantial evidence demonstrates that EHE and power outages are recurring yearly and only increasing, and the purpose of a BUG is to provide emergency backup power.⁷ The City must remedy this omission in an EIR.⁸

³ CREED LA’s responses to the Staff Report and Responses are summarized briefly herein and in the attached expert comments. CREED LA reserves the right to supplement these comments with additional evidence and responses at a later time before the final decisional hearing. Gov. Code § 65009(b); Pub. Res. Code (“PRC”) § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (“*Bakersfield*”) (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121

⁴ Responses, p. 14.

⁵ *Sierra Club v. County of Fresno* (2018), 6 Cal.5th 521.

⁶ *Id.*

⁷ *Laurel Heights*, 47 Cal.3d at p. 396 (emphasis added); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-50; See Adams Broadwell October 13, 2021 Letter, p.12.

⁸ The City’s failure to account for these errors also impacts its analysis regarding the cumulative impacts on air quality. We reincorporate our previous comments regarding cumulative impacts, which have not been addressed.
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B. Substantial Evidence Still Supports a Fair Argument that the Project Has Potentially Significant Soil Vapor Impacts

CEQA requires that an MND disclose the severity of a project's impacts and the probability of their occurrence *before* a project can be approved.⁹ The MND violated these basic disclosure requirements by failing to accurately analyze the health risk posed by soil vapor intrusion at the Project site.¹⁰ Dr. Clark concluded that, when properly analyzed, the maximum risk from soil vapor intrusion exceeds the DTSC significance threshold for carcinogenic chemicals of 10 in 1,000,000 for commercial workers on site.¹¹ The Responses now acknowledge that additional soil vapor analysis is required, but propose to defer the analysis to a future "additional vapor sampling" study that would not be circulated for public review and may not ensure that the of the Project's impacts on human health are adequately mitigated.¹² This is a new CEQA violation.

The MND failed to evaluate this impact, in violation of CEQA.¹³ As a result of its failure to investigate, the MND lacked substantial evidence to support its conclusion that the impacts from disturbing contaminated soil would be mitigated. The Staff Report and Responses propose to defer this analysis until after Project approval, a procedural violation which fails to rebut substantial evidence supporting a fair argument that the Project has significant hazards impacts.

II. The Advisory Agency's CEQA Findings Were Premature and Unsupported and the Subsequent Review Standard is Inapplicable

The LOD states that the Advisory Agency "adopted" the MND on December 22, 2021, in conjunction with approval of the VTTM.¹⁴ The Project's remaining entitlements are still pending final approval by the CPC (Conditional Use and Site Plan Review) and City Council based on the Commission's approval recommendations (General Plan amendment and Vesting Zone and Height District changes). The Project is therefore still undergoing its initial approval process and the Advisory Agency's "adoption" of the MND was therefore premature and in violation of CEQA.¹⁵

To approve an MND, CEQA requires that the lead agency determine whether the MND fully and accurately describes a specific development project that is "proposed to be carried out or approved by [the agency],"¹⁶ then make findings that the project will not have a significant effect on the environment, and that mitigation measures have been included in the project to avoid potentially significant effects.¹⁷ The Advisory Agency lacked the legal capacity to make those

⁹ 14 CCR §§ 15143, 15070(a); *Cal. Build. Indust. Ass'n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90 ("*CBIA v. BAAQMD*") (disturbance of toxic soil contamination at project site is potentially significant impact requiring CEQA review and mitigation); *Madera Oversight Coalition*, 199 Cal.App.4th at 82; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs. ("Berkeley Jets")* (2001) 91 Cal.App.4th 1344, 1370-71; CEQA Guidelines, Appendix G.

¹⁰ See MND Comments, pp. 14-16; Clark MND comments, pp. 5-7.

¹¹ *Id.*

¹² Responses, p. 21.

¹³ 14 CCR § 15126.2(a); *CBIA v. BAAQMD*, 62 Cal.4th at 388-90.

¹⁴ LOD, p. 12.

¹⁵ *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 426-27.

¹⁶ PRC § 21080(a).

¹⁷ 14 CCR § 15071(c), (e).

determinations because the Project's future, scope, and the extent of its entitlements and its environmental impacts remained uncertain at the time the Advisory Agency conducted its hearing on the Project. The Advisory Agency also lacks decision-making authority under the LAMC for the majority of the Project's entitlements, and could not adopt the MND for the Project as a whole.

CEQA mandates that agencies refrain from adopting an MND before full consideration of all aspects of a project, regardless of what LAMC sections 17.03 and 17.15 state.¹⁸ The Advisory Agency's actions in adopting the MND before the majority of the Project's entitlements had been considered by the CPC or City Council was a clear violation of CEQA, which "skirt[red] the purpose of CEQA by segregating environmental review of the [MND] from the project approval."¹⁹

Lastly, the City states that *County of Amador, Coalition for an Equitable Westlake, Stockton Citizens for Sensible Planning, Coalition for Clean Air, and Habitat & Watershed Caretakers* are all inapplicable because they do not relate to the Project or circumstances surrounding the Project. Under such reasoning, no judicial opinion could ever be applied to current projects. Contrary to the City's assertion, the above cases do support the proposition that CEQA approvals may not take place prior to all the entitlements being decided, as is occurring here. The CPC should uphold this appeal, vacate the Advisory Agency's approval of the MND and approval of the VTTM, and vacate its CEQA findings.

III. The Advisory Agency's Subdivision Map Act Findings and Entitlement Determinations Were Unsupported by Substantial Evidence

As discussed above, there is substantial evidence in the record supporting a fair argument that the Project has potentially significant impacts to air quality, GHG emissions, noise, and hazardous materials. Thus, the VTTM findings and other entitlement findings could not be properly adopted as described in the LOD and thus need to be rescinded.

IV. CONCLUSION

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.

Sincerely,



Darien Key

DKK:acp
Attachment

¹⁸ *Id.*; see, e.g., *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 963; *Coalition for an Equitable Westlake/MacArthur Park v. City of Los Angeles* (2020) 47 Cal.App.5th 368, 379; *Stockton Citizens for Sensible Planning v. City of Stockton*, 48 Cal. 4th 481, 489; *Coal. for Clean Air v. Visalia* (2012) 209 Cal.App.4th 408, 418-25.

¹⁹ *California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325, 1341.
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