

# ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

## ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

DANIEL L. CARDOZO  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
KENDRA D. HARTMANN\*  
KYLE C. JONES  
RACHAEL E. KOSS  
AIDAN P. MARSHALL  
WILLIAM C. MUMBY

MARC D. JOSEPH  
*Of Counsel*

\*Not admitted in California.  
Licensed in Colorado.

January 25, 2021

### **Via Email and Overnight Mail**

Jivar Afshar, Planning Assistant  
City of Los Angeles  
Department of City Planning  
221 N. Figueroa St., Suite 1350  
Los Angeles, CA 90012  
Email: [jivar.afshar@lacity.org](mailto:jivar.afshar@lacity.org)

### **Via Email Only**

Vince Bertoni, Director of Planning  
Email: [vince.bertoni@lacity.org](mailto:vince.bertoni@lacity.org)

### **Re: Preliminary Comments on the Draft Environmental Impact Report – 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV-2016-3691-EIR)**

Dear Ms. Afshar and Mr. Bertoni:

We are writing on behalf of **Coalition for Responsible Equitable Economic Development (“CREED LA”)** to provide these preliminary comments on the Draft Environmental Impact Report (“DEIR”) prepared for the 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV 2016-3691-EIR) (“Project”), proposed by District Centre, LP, & District Centre-GPA, LP (collectively, “Applicant”). The Project proposes the demolition of the existing warehouse and surface parking lot, and the construction of an up-to 197,355-square-foot mixed-use building, including up to 185 live/work units, approximately 15,320 square feet of open space for residents, up to 23,380 square feet of art-production and commercial space, and associated parking facilities. The Project site is located at 668-678 S. Mateo Street and 669-679 S. Imperial Street in the Central City North community of the City of Los Angeles, and consists of eight contiguous lots associated with Assessor Parcel Number 5164-020-021.

L4986-005acp

This letter contains the preliminary comments of CREED LA and its technical consultants based on an initial review of the DEIR. As discussed below, the City failed to provide CREED LA with timely access to the DEIR reference documents, as required by the California Environmental Quality Act<sup>1</sup> (“CEQA”). The City also declined CREED LA’s January 20, 2021 request to extend the formal public comment period to allow additional time for the public to review DEIR reference documents that were provided just days before the end of the DEIR’s current public comment period.<sup>2</sup> Due to the limited time provided for public comment, and CREED LA’s limited access to documents underlying the DEIR’s analysis, we have not had adequate time to fully review and comment on the DEIR. We reserve the right to supplement supplemental comments on the DEIR by February 8, 2021, and at any and all later proceedings related to this Project.<sup>3</sup>

Based on our initial review, it is clear that the DEIR fails to comply with CEQA<sup>4</sup> in several respects. As explained more fully below, the DEIR fails to accurately disclose the extent of the Project’s potentially significant impacts on air quality, greenhouse gases (“GHG”), public health, and noise; fails to support its findings with substantial evidence; and fails to properly mitigate the Project’s potentially significant impacts. The City cannot approve the Project until the errors in the DEIR are remedied and a revised DEIR is circulated for public review and comment.

We reviewed the DEIR and its appendices with the assistance of highly qualified technical consultants, including air quality consultant James Clark, Ph.D.<sup>5</sup> and acoustics expert Neil A. Shaw, FASA, FAES.<sup>6</sup> The attached expert comments require separate responses under CEQA.<sup>7</sup>

---

<sup>1</sup> Pub. Resources Code (“PRC”) §§ 21000 et seq.; 14 Cal. Code Regs. (“CCR”) §§ 15000 et seq.; PRC § 21092(b)(1); 14 CCR § 15087(c)(5).

<sup>2</sup> The City has provided CREED LA an informal extension to February 8, 2021 to submit its DEIR comments, but declined to extend the existing CEQA public comment period, which ends on January 25, 2021.

<sup>3</sup> Gov. Code § 65009(b); 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.

<sup>4</sup> Pub. Resources Code (“PRC”) §§ 21000 et seq.; 14 Cal. Code Regs. (“CCR”) §§ 15000 et seq.

<sup>5</sup> Mr. Clark’s technical comments and curriculum vitae are attached hereto as **Exhibit A** (hereinafter Clark Comments).

<sup>6</sup> Mr. Shaw’s technical comments and curriculum vitae are attached hereto as **Exhibit B** (hereinafter Shaw Comments).

<sup>7</sup> 14 CCR § 15088(a), (c).

## I. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Los Angeles.

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

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

## II. 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>8</sup> The EIR is the very heart of CEQA.<sup>9</sup> "The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so

---

<sup>8</sup> See, e.g., PRC § 21100.

<sup>9</sup> *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.  
L4986-005acp

as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”<sup>10</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>11</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>12</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>13</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>14</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>15</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>16</sup>

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘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>17</sup> As the courts have explained, “a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision making and informed public participation, thereby

---

<sup>10</sup> *Comtys. for a Better Env’ v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 (“*CBE v. CRA*”).

<sup>11</sup> 14 CCR § 15002(a)(1).

<sup>12</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

<sup>13</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>14</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>15</sup> 14 CCR §15002(a)(2).

<sup>16</sup> PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

<sup>17</sup> *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), *quoting, Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12.

thwarting the statutory goals of the EIR process.”<sup>18</sup> “The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail ‘to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”<sup>19</sup>

### **III. THE CITY FAILED TO PROVIDE TIMELY ACCESS TO DOCUMENTS REFERENCED AND INCORPORATED BY REFERENCE IN THE DEIR**

The City violated CEQA and improperly truncated the DEIR public comment period by failing to make all documents referenced or relied on in the DEIR available for public review during the Project’s public comment period.<sup>20</sup> As a result, CREED LA was unable to complete its review and analysis of the DEIR and its supporting evidence during the current public comment period, which ends on January 25. Our request that the City extend the public comment period was denied. We therefore provide these initial comments on the DEIR and reserve our right to submit supplemental comments on the DEIR at a future date.

Access to all of the documents referenced in the DEIR is necessary to conduct a meaningful review of its analyses, conclusions, and mitigation measures and to assess the Project’s potential environmental impacts. CEQA requires that “all documents referenced” and “incorporated by reference” in the draft environmental impact report be available for review and “*readily accessible*” during the entire comment period.<sup>21</sup> The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the review and comment period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.<sup>22</sup> It is also well-settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.<sup>23</sup>

---

<sup>18</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

<sup>19</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, quoting *Laurel Heights*, 47 Cal.3d at 405.

<sup>20</sup> See PRC § 21092(b)(1); 14 CCR § 15087(c)(5).

<sup>21</sup> PRC § 21092(b)(1) (emphasis added); 14 CCR § 15087(c)(5).

<sup>22</sup> See *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

<sup>23</sup> *Santiago County Water Dist. V. County of Orange* (1981) 118 Cal.App.3d 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

On December 22, 2020, we submitted a request for immediate access to documents referenced in the DEIR seeking “any and all documents referenced, incorporated by reference, and relied upon” by the City in its preparation of the DEIR.<sup>24</sup>

On January 6, 2021, we were told during a phone conversation with City staff that we could have access to two CDs containing all of the documents referenced in the DEIR and its appendices.<sup>25</sup> On January 13, 2021, we received the two CDs. The CDs, however, did not include any DEIR reference documents that we did not previously have access to.

On January 19, 2021, at the City’s request, we submitted a list of the missing DEIR reference documents to the City.<sup>26</sup> In response, the City informed us that our January 19, 2021 list was considered a new request pursuant to the California Public Records Act (“PRA”), a misunderstanding on the City’s part.<sup>27</sup> We responded by clarifying that our January 19 email was a follow up to CREED LA’s original December 22, 2020 DEIR reference document request made pursuant to CEQA.<sup>28</sup>

On January 21, 2021, we received an email from the City providing partial access to the missing documents. The email indicated that access to the remainder of the documents would be provided “in the near future.”<sup>29</sup> In response to our reply email, which requested a response to our letter seeking an extension as well as clarification on when we could expect the remainder of the documents, the City responded on January 22, 2021 by providing access to the remainder of the DEIR reference documents, one business day before the close of the comment period.<sup>30</sup> Despite its late document production, the City declined CREED LA’s request to

---

<sup>24</sup> Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”) to the City of Los Angeles re “Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report – 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV-2016-3691-EIR)” (Dec. 22, 2020).

<sup>25</sup> Personal communication between Kendra Hartmann and Jivar Afshar, January 19, 2021

<sup>26</sup> **Attachment A:** Email from ABJC to City re “676 Mateo Street Project - List of Missing DEIR Ref Docs” (Jan. 19, 2021).

<sup>27</sup> Email from City to ABJC re “676 Mateo Street Project - List of Missing DEIR Ref Docs” (Jan. 20, 2021).

<sup>28</sup> Email from ABJC to City re “676 Mateo Street Project – List of Missing DEIR Docs” (Jan. 20, 2021).

<sup>29</sup> **Attachment B:** Email from City to ABJC re “676 Mateo Street Project - List of Missing DEIR Ref Docs” (Jan. 21, 2021).

<sup>30</sup> **Attachment C:** Email from City to ABJC re “676 Mateo Street Project - List of Missing DEIR Ref Docs” (Jan. 22, 2021).

extend the public comment period. The City cited CEQA Guidelines Section 15105 as support for its denial, which states that “[t]he public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days *except in unusual circumstances*.”<sup>31</sup> The City’s inability to provide access to all of the DEIR reference documents during the DEIR’s public comment period constituted unusual circumstances warranting an extension.<sup>32</sup> The City ultimately agreed to provide CREED LA with an informal two-week extension to February 8, 2021 to provide comments on the DEIR, but did not extend the comment period.<sup>33</sup>

CEQA requires that all documents referenced, incorporated by reference, and relied upon in a DEIR be readily available to the public during the entire CEQA public comment period. Despite CREED LA’s month-long efforts to obtain “immediate access” to all materials referenced in the DEIR, the City granted access these materials in an untimely, piecemeal fashion over a period of more than 30 days, then declined to extend the public comment period. The City’s actions flout CEQA’s disclosure requirements.<sup>34</sup> By failing to make all documents referenced and incorporated by reference in the DEIR “readily accessible” to the public during the entire comment period, the City violated the clear procedural mandates of CEQA, to the prejudice of CREED LA and other members of the public.

#### **IV. THE DEIR FAILS TO ADEQUATELY DESCRIBE THE PROJECT**

The DEIR does not meet CEQA requirements because it fails to include a complete and accurate project description, rendering the entire impact analysis unreliable. An accurate and complete project description is necessary to perform an evaluation of the potential environmental effects of a proposed project.<sup>35</sup> Without a complete project description, the environmental analysis will be impermissibly narrow, thus minimizing the project’s impacts and undercutting public review.<sup>36</sup> 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

---

<sup>31</sup> 14 C.C.R. § 15105(a) (emphasis added).

<sup>32</sup> See *Ultramar*, 17 Cal.App.4th at 699.

<sup>33</sup> Email from City to ABJC re “676 Mateo Street Project - List of Missing DEIR Ref Docs” (Jan. 22, 2021).

<sup>34</sup> *Id.*; Gov. Code § 6253(a) (requires public records to be “open to inspection at all times during the office hours of the state or local agency” and provides that “every person has a right to inspect any public record.”).

<sup>35</sup> See, e.g., *Laurel Heights*, 47 Cal.3d 376.

<sup>36</sup> See *ibid.*

L4986-005acp

document].”<sup>37</sup> “Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal’s benefit against its environmental costs.”<sup>38</sup>

CEQA Guidelines Section 15378 defines “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”<sup>39</sup> “The term ‘project’ refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval.”<sup>40</sup> Courts have explained that for a project description to be complete, it must address not only the immediate environmental consequences of going forward with the project, but also all “*reasonably foreseeable* consequence[s] of the initial project.”<sup>41</sup> Accordingly, CEQA requires that the project description contain a brief statement of the intended uses of an EIR, including a list of agencies which will use the EIR, along with the permits and approvals required for implementation of a proposed project.<sup>42</sup>

#### **A. The DEIR Fails to Adequately Describe the Project’s Activities that May Result in Significant Noise Impacts**

The DEIR fails to adequately describe the Project’s specifics regarding construction activities, particularly as relates to the approximately 74,500 cubic yards of soil that the City anticipates will be hauled off the Project site. No description is provided of the location for the staging of the haul trucks or the size of the haul trucks to be used in the export of the soil. A description of the hours during which trucks will make haul trips and how many trips they will make per day is likewise absent from the DEIR. This information is crucial to determine the level of the noise the trucks will emit and the hours during which residents and neighbors will be affected.

---

<sup>37</sup> *County of Inyo*, 71 Cal.App.3d at p. 193.

<sup>38</sup> *Id.* at 192-193.

<sup>39</sup> CEQA Guidelines § 15378.

<sup>40</sup> *Id.* § 15378(c).

<sup>41</sup> *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.

<sup>42</sup> CEQA Guidelines § 15124(d).



Furthermore, though the DEIR's Project Description section states that requests for permits for the sale and consumption of alcohol on the premises are anticipated, descriptions of the accompanying activities, such as live or recorded music, are not included in the DEIR.<sup>43</sup> As Mr. Shaw explains, noise from boisterous patrons and music being played at the rooftop pool area and businesses will likely have an impact on the residences to the west of the Project site, and could impact homes' interiors since windows do not have good low-frequency attenuation.<sup>44</sup> The resulting noise from these activities may require mitigation to reduce adverse impacts to neighboring residents. The DEIR fails to disclose whether the Project anticipates the use of sound systems, alcohol use in the pool area, and other sources of significant noise impacts, thus failing to disclose a potentially significant operational noise impact.<sup>45</sup>

The DEIR'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. Mitigation measures, such as retrofitting windows at impacted residential properties, may be necessary to reduce these impacts, but are absent from the DEIR. The DEIR's conclusion that the Project will result in less than significant operational noise impacts, with no mitigation required, is not supported by substantial evidence.<sup>46</sup>

## **V. THE DEIR FAILS TO ADEQUATELY ANALYZE, QUANTIFY, AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS**

An EIR 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>47</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>48</sup>

---

<sup>43</sup> DEIR Section II. Project Description, p. II-40.

<sup>44</sup> Shaw Comments, p. 5.

<sup>45</sup> Shaw Comments, p. 1.

<sup>46</sup> See DEIR, Page IV.H-33.

<sup>47</sup> 14 CCR § 15064(b).

<sup>48</sup> *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.  
L4986-005acp

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.<sup>49</sup> 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 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>50</sup> In reviewing challenges to an agency's approval of an EIR 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>51</sup>

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR 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>52</sup>

#### **A. The DEIR Fails to Adequately Disclose and Mitigate the Project's Significant Noise Impacts**

The CEQA Guidelines require an EIR to consider "whether a project would result in...[g]eneration of a substantial temporary or periodic increase in ambient noise levels in the vicinity of the project . . ."<sup>53</sup> The DEIR's noise analysis fails to accurately disclose the Project's noise impacts for several reasons.

##### *i. The DEIR's Noise Analysis Contains Inadequate Baseline Data*

The DEIR's Noise Report fails to accurately calculate the baseline ambient noise at the Project site. An accurate baseline is necessary to assess the significance of the Project's two-year construction noise on sensitive receptors in the vicinity of the Project site.<sup>54</sup>

---

<sup>49</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

<sup>50</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>51</sup> *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

<sup>52</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355.

<sup>53</sup> CEQA Guidelines, Appendix G, Sec. XII(d).

<sup>54</sup> 14 CCR § 15125; *Comtys. For A Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 328 (accurate description of the affected environment is essential because it establishes the baseline physical conditions against which a lead agency can then determine whether an impact  
L4986-005acp

To establish ambient noise levels at the Project site, the DEIR relies on two, 15-minute, on-site noise measurements conducted on a single day: July 5, 2017. One measurement was west of the Project site, near the Toy Factory Lofts and National Biscuit Company residential sensitive receptors, while the other measurement was taken at the northeast corner of the Project site, near the Amp Factory Lofts.<sup>55</sup> The recorded noise levels at those site visits were 66.4 dBA L<sub>EQ</sub> and 69.3 dBA L<sub>EQ</sub>, respectively.<sup>56</sup> These isolated measurements are inadequate to establish existing ambient noise levels at all relevant areas in the vicinity of the Project site. Furthermore, as Mr. Shaw points out, the DEIR does not disclose environmental conditions present when the measurements were taken.<sup>57</sup> Certain conditions, such as the time of day the measurements were taken or the presence of other construction activities or wind, could result in significantly inconsistent acoustical values.<sup>58</sup> The DEIR's failure to disclose these conditions, and its reliance on overly limited noise data, makes an accurate analysis of the DEIR's conclusions of noise impacts impossible.

*ii. The DEIR Underestimates and Inadequately Mitigates the Project's Noise Impacts*

CEQA does not set a numeric threshold for determining the significance of ambient noise increases. Lead agencies may select their own thresholds. The agency's selection of a threshold of significance must be supported by substantial evidence.<sup>59</sup> As explained by Mr. Shaw in his comments, the threshold chosen to determine whether the Project's noise impacts will be significant does not consider the actual distance of the Project's construction activities to nearby sensitive receptors.<sup>60</sup> In addition, the DEIR fails to address potentially significant noise impacts from the Project's construction activities, both underestimating some impacts and failing to disclose others.

---

is significant); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 952; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App 4th 1109, 1121-22

<sup>55</sup> DEIR Section IV.H Noise, p. IV.H-17.

<sup>56</sup> *Id.*

<sup>57</sup> Shaw Comments, p. 1.

<sup>58</sup> *Id.*

<sup>59</sup> 14 CCR § 15064(b); *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 884.

<sup>60</sup> DEIR Section IV.H Noise p. IV.H-13: "LAMC Section 112.05 sets a maximum noise level for construction equipment of 75 dBA at a distance of 50 feet when operated within 500 feet of a residential zone." The closest sensitive receptors will be closer than 50 feet from the noise sources. L4986-005acp

Moreover, the DEIR underestimates the noise levels from construction activities, such as the distance of trucks hauling soil and other construction debris from sensitive receptors near the Project site and the number of trips those trucks will make to and from the site.<sup>61</sup> Table IV.H-8, which estimates the noise range of Project construction equipment, measures the sound levels at 50 feet from the noise source. As Mr. Shaw clarifies, however, the actual distance of haul trucks making incoming trips to the Project is 30 feet from the closest sensitive receptors—the Biscuit Company and Toy Factory lofts—while the outgoing route of the trucks is only 15 feet from the Biscuit Company Lofts.<sup>62</sup> The DEIR’s noise measurements were therefore conducted using inaccurate and unsupported distances. When accurate distances are used, noise levels increase by 4.4 dBA and 10.4 dBA higher, respectively, over the levels cited in the DEIR. The DEIR therefore fails to accurately disclose the distance of sensitive receptors to the Project site, resulting in inadequate analyses of impacts on these receptors and incorrect conclusions about the nature and severity of the Project’s impacts.

Furthermore, the DEIR states that “peak construction noise levels at all sensitive receptors would be below the 75 dBA construction noise threshold defined by the Section 41.40 of the [Los Angeles Municipal Code (“LAMC”).]”<sup>63</sup> As Mr. Shaw explains, however, LAMC Section 41.40 includes no such threshold.<sup>64</sup> Regardless, based on the estimated 142 haul truck trips per day (71 inbound and 71 outbound) stated in the DEIR, Mr. Shaw calculates that noise levels will exceed any such threshold. Mr. Shaw’s calculations demonstrate that 75 dBA will be exceeded every 6.4 minutes if the trucks are making haul trips for 15 hours a day (from, for example, 7 a.m. to 10 p.m.) or every 3.6 minutes if they are hauling for 10 hours a day (such as between the hours of 7 a.m. and 5 p.m.).<sup>65</sup> This is a significant noise impact which the DEIR fails to disclose.

The courts have held that compliance with regulations, including noise ordinances, is not an adequate significance threshold because it does not foreclose

---

<sup>61</sup> Shaw Comments, p. 3.

<sup>62</sup> Shaw Comments, p. 2.

<sup>63</sup> DEIR Section IV.H Noise, p. IV.H-27.

<sup>64</sup> Los Angeles Municipal Code, available at

[https://codelibrary.amlegal.com/codes/los\\_angeles/latest/lamc/0-0-0-128777#JD\\_41.40](https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-128777#JD_41.40) (last accessed Jan. 20, 2021).

<sup>65</sup> Shaw Comments, p. 3.

L4986-005acp

the possibility of significant impacts.<sup>66</sup> Similarly, here, compliance with any LAMC threshold does not assure that noise impacts will be less than significant. As Mr. Shaw states, “If the number of trips per day is greater than stated, noise impacts will be more frequent and could become almost continuous.”<sup>67</sup>

Finally, though the DEIR includes in its mitigation measures the installation of an 8-foot barrier to be erected during demolition and excavation/grading activities,<sup>68</sup> the barrier will do nothing to combat the noise impacts to multi-story residential buildings on either side of the Project site.<sup>69</sup> The noise impacts to these receptors, both from construction and operation of the Project once completed, will be substantial.<sup>70</sup> The mitigation offered by the DEIR is wholly insufficient. This is a separate CEQA violation. The DEIR concludes that construction noise impacts are significant and unavoidable. Therefore, the DEIR must adopt all feasible mitigation measures to reduce construction noise impacts to the greatest extent feasible.<sup>71</sup>

An additional, potentially feasible mitigation measure for this impact would be to include Plexiglass balcony barriers on the higher levels of the adjacent residential buildings. This is a measure that is often used on residential balconies which abut noisy roadways. Installation of heavy Plexiglass or other clear panels around the edges of the residential balconies would act as sound barriers without affecting residents’ light or view. The DEIR should adopt the recommended mitigation measure or explain why, based on substantial evidence, the proposed measure is infeasible before it can consider approving the Project.<sup>72</sup>

### **B. The DEIR Fails to Adequately Disclose and Mitigate the Project’s Significant 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

---

<sup>66</sup> *Keep our Mountains Quiet v. Santa Clara* (2015) 236 Cal.App.4th 714, 733; *CBE v. CRA* (2002) 103 Cal.App.4th 98, 115-16; *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 893, as modified on denial of reh'g (Mar. 20, 2020)

<sup>67</sup> Shaw Comments, p. 4.

<sup>68</sup> MM NOI-1, DEIR Section IV.H Noise, p. IV.H-34.

<sup>69</sup> DEIR Section II. Project Description, p. II-1.

<sup>70</sup> Shaw Comments, p. 1.

<sup>71</sup> *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

<sup>72</sup> *Id.*

violation.”<sup>73</sup> The South Coast Air Quality Management District (“SCAQMD” or “Air District”) 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.<sup>74</sup> The DEIR failed to accurately analyze and mitigate the Project’s construction emissions by using an unsupported qualitative threshold to analyze project emissions, by improperly concluding that GHG emissions are insignificant, by improperly disguising mitigation measures as Project design features, and by relying on ineffective mitigation which is unenforceable and speculative. Furthermore, the DEIR failed to evaluate the cancer risk impacts resulting from exposure to toxic diesel particulate matter (“DPM”) emissions generated during Project construction and operation. As a result, the DEIR’s conclusions that the Project’s air quality and health risk impacts from emissions generated during Project construction and operation will be less than significant are unsupported and inaccurate.

**a. The DEIR Fails to Disclose and Analyze Air Quality Impacts from Construction and Operation**

*i. The DEIR’s Analysis of GHG Emissions Relies on an Unsupported Threshold*

Under the CEQA Guidelines, a lead agency must analyze a project’s impacts on GHG emissions.<sup>75</sup> The Guidelines allow for several approaches to this analysis, both qualitative and quantitative. The Guidelines explicitly mandate, however, that the “analysis should consider a timeframe that is appropriate for the project. The agency’s analysis also must reasonably reflect evolving scientific knowledge and state regulatory schemes.”<sup>76</sup> In determining the significance of GHG emissions impacts, the agency must consider the “extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.”<sup>77</sup>

The City has not adopted a numerical significance threshold for assessing impacts related to GHG emissions and has not formally adopted a local plan for

---

<sup>73</sup> CEQA Appendix G.

<sup>74</sup> See SCAQMD Thresholds, available at <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>.

<sup>75</sup> 14 CCR §15064.4.

<sup>76</sup> 14 CCR §15064.4(b)

<sup>77</sup> 14 C.C.R. § 15064.4(b)(3).

reducing GHG emissions. The DEIR concludes that the Project's GHG impacts would be less than significant based on the Project's consistency with the goals and actions to reduce GHG emissions found in the City's Green New Deal, the Southern California Association of Governments 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy ("SCAG RTP/SCS"), and the 2008 California Climate Change Scoping Plan.<sup>78</sup>

Though the DEIR outlines a few ways in which the Project will comply with these plans, the majority of its strategies for assuring consistency are ambiguous at best, and are not supported by substantial evidence. Many of these strategies delegate to other agencies and departments the responsibility of determining compliance with the plans, while others make conclusory statements regarding the Project's compliance with particular strategies for reducing emissions without providing any support for these conclusions. For example, the DEIR asserts that the Project does not conflict with strategies that propose adopting vehicle efficiency measures in order to reduce GHG emissions included in the AB 32 Scoping Plan because it is required to comply with them.<sup>79</sup> Likewise, the DEIR claims that it will be required to comply with CARB's measures to reduce hydrofluorocarbon emissions, so it will therefore comply with the Scoping Plan's strategies to reduce emissions of gases with high global warming potential.<sup>80</sup> These—and several other claims made by the DEIR regarding its compliance with state and regional plans and policies—offer no meaningful analysis of how the Project would specifically comply with these strategies.

Additionally, the DEIR claims its consistency with the SCAG RTP/SCS supports the conclusion that the Project will not result in significant GHG emissions. Its analysis, however, consists of stating that the Project "would accommodate increases in population, households, employment, and travel demand," and that because the Project site is located in close proximity to public transit stops, it would result in reduced vehicle-miles traveled ("VMT"), "as compared to a project of similar size and land uses at a location without close and walkable access to off-site destinations and public transit stops."<sup>81</sup> The DEIR further asserts that the Project will contribute to a reduction in GHG emissions due to the Project's addition of compact housing and jobs close to public transit, as well

---

<sup>78</sup> DEIR Section IV.D Greenhouse Gases, p. IV.D-27.

<sup>79</sup> *Id.*, p. 45.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*, p. IV.D-49.

L4986-005acp

as the construction of biking and walking infrastructure.<sup>82</sup> It inexplicably ignores, however, other strategies aimed at reducing GHG emissions included in the SCAG RTP/SCS, such as adaptive reuse of existing structures, an approach with which the Project's demolition of existing structures and construction of new ones is in direct contradiction.<sup>83</sup>

The DEIR's statements cannot qualify as analyses of consistency with local, state, and regional plans because they lack any discussion of the plans' goals and policies as they apply to the Project. An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>84</sup> The DEIR's discussion fails to meet this standard.

*ii. The DEIR Attempts to Conceal Potentially Significant GHG Emissions by Disguising Mitigation Measures as Project Design Features*

The DEIR concludes that its consistency with local, state, and regional plans signifies that Project GHG emissions cannot be considered significant. As Dr. Clark explains, however, the DEIR's own calculations of GHG emissions demonstrate that emissions will, in fact, be significant. Without the incorporation of design features meant to reduce emissions, Project-related GHG emissions will increase exponentially, to more than 8 times their current level, from 546 MTCO<sub>2e</sub> to 4,445 MTCO<sub>2e</sub>. Even with the incorporation of such design features, they are still projected to increase to more than 6 times their current level, to 3,394 MTCO<sub>2e</sub>.<sup>85</sup>

The DEIR appears to acknowledge the significance of this increase with the inclusion of several measures designed to minimize adverse impacts—such as from emissions of GHG and other pollutants—while simultaneously concluding that the Project will not result in significant impacts in these areas of concern. However, the DEIR does not mandate the use of the GHG reduction measures as binding mitigation.

---

<sup>82</sup> *Id.*

<sup>83</sup> 2016-2040 SCAG RTP/SCS, p. 78.

<sup>84</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 520; *Kings County Farm Bureau*, 221 Cal.App.3d at 732.

<sup>85</sup> Clark Comments, p. 10; DEIR Section IV.D Greenhouse Gases, p. IV.D-37; the City chose to quantify Project GHG emissions to satisfy CEQA Guidelines Section 15064.4(a), though it relies only on a qualification threshold to analyze the significance of emissions.

L4986-005acp



Under CEQA, it is improper to attempt to disguise mitigation measures as part of the project's design if this obfuscates the potential significance of environmental impacts.<sup>86</sup> In *Lotus v. Department of Transportation*, an EIR prepared by the California Department of Transportation ("CalTrans") contained measures to help minimize potential stress on redwood trees during highway construction, such as restorative planting, invasive plant removal, watering, and use of an arborist and specialized excavation equipment.<sup>87</sup> The Court of Appeal held that the EIR improperly compressed the analysis of impacts and mitigation measures into a single issue because the EIR did not designate the measures as mitigation and concluded that because of the measures, no significant impacts were anticipated.<sup>88</sup> The Court explained that a significance determination must be made independent of mitigation first, then mitigation can be incorporated, and the effectiveness of those measures can be evaluated.<sup>89</sup> "Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered."<sup>90</sup>

For example, though the DEIR concludes that GHG emissions from the Project will not be significant, it also states that emissions would be reduced through measures such as "technological improvements and additions to California's renewable resource portfolio."<sup>91</sup> "Anticipated deployment of improved vehicle efficiency, zero emission technologies, lower carbon fuels, and improvement of existing transportation systems" will further reduce Project emissions.<sup>92</sup> "Enhancements in water conservation technologies" and future improvements in waste management will likewise reduce Project impacts.<sup>93</sup>

Additionally, these measures are a further indication of the DEIR's violations of CEQA by offering only unenforceable and speculative mitigation. The DEIR

---

<sup>86</sup> *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 658 (compression of mitigation measures into project design without acknowledging potentially significant impact if effects were not mitigated violates CEQA)

<sup>87</sup> *Id.* at 650.

<sup>88</sup> *Id.* at 656.

<sup>89</sup> *Id.* at 654–656.

<sup>90</sup> *Id.* at 656.

<sup>91</sup> DEIR Section IV.D Greenhouse Gases, p. IV.D-42.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

L4986-005acp

provides no analysis of how or to what extent emissions will be reduced by its reliance on unknown future technological advances or actions. The DEIR does not disclose what construction equipment it used to model construction emissions, so its presumption that emissions will be lowered over time—assuming that as older equipment is retired from use, newer, more efficient equipment will replace it—is unreliable. The DEIR provides no guarantee that older, less efficient equipment will not be used in construction.

By failing to make a significance determination about air quality impacts independent of mitigation before incorporating emissions reductions measures into the calculations, the DEIR commits the same fatal error found in *Lotus*. Just as use of specialized equipment and practices to limit impacts to the roots of redwood trees should have been classified as mitigation measures, so too should the incorporation of myriad measures to reduce emissions. The City’s failure to acknowledge the significance of impacts to air quality from pollutant emissions prevents the public from properly evaluating the effectiveness of the mitigation measures proposed.

### **C. The DEIR Fails to Disclose and Analyze Health Risks from Construction and Operational Emissions and Failed to Conduct a Quantified Health Risk Analysis**

An agency must support its findings of a project’s potential environmental impacts with concrete evidence, with “sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision.”<sup>94</sup> A project’s health risks “must be ‘clearly identified’ and the discussion must include ‘relevant specifics’ about the environmental changes attributable to the Project and their associated health outcomes.”<sup>95</sup>

Courts have held that an environmental review document must disclose a project’s potential health risks to a degree of specificity that would allow the public to make the correlation between the project’s impacts and adverse effects to human health.<sup>96</sup> In *Bakersfield*, the court found that the EIRs’ description of health risks were insufficient and that after reading them, “the public would have no idea of the health consequences that result when more pollutants are added to a

---

<sup>94</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

<sup>95</sup> *Id.* at 518.

<sup>96</sup> *Id.* at 518–520; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

nonattainment basin.”<sup>97</sup> Likewise in *Sierra Club*, the California Supreme Court held that the EIR’s discussion of health impacts associated with exposure to the named pollutants was too general and the failure of the EIR to indicate the concentrations at which each pollutant would trigger the identified symptoms rendered the report inadequate.<sup>98</sup> Some connection between air quality impacts and their direct, adverse effects on human health must be made. 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>99</sup> CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.<sup>100</sup>

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.<sup>101</sup> 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 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>102</sup> Courts reviewing challenges to an agency’s approval of a CEQA document 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>103</sup>

Claiming that emissions of toxic air contaminants (“TACs”) will be less than significant, the DEIR fails to include a health risk analysis to disclose the adverse health impacts that will be caused by exposure to TACs from the Project’s construction and operational emissions. As a result, the DEIR fails to disclose the potentially significant risk posed to nearby residents and children from TACs, and fails to mitigate it. Because the DEIR fails to support its conclusion that the Project will not have significant health impacts from diesel particulate matter (“DPM”)

---

<sup>97</sup> *Id.* at 1220.

<sup>98</sup> *Sierra Club*, at 521.

<sup>99</sup> *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

<sup>100</sup> *Sierra Club*, 6 Cal.5th at 518–522.

<sup>101</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

<sup>102</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>103</sup> *Id.* (internal quotations omitted).

emissions with the necessary analysis, this finding is not supported by substantial evidence.

One of the primary emissions of concern regarding health effects for land development projects is DPM, which can be released during Project construction and operation. The DEIR acknowledges that the greatest potential for TAC emissions during construction would be related to DPM emissions associated with heavy-duty equipment during excavation and grading activities.<sup>104</sup> However, the DEIR failed to perform a quantitative assessment of the Project's DPM emissions, instead concluding that the Project's cancer risk from exposure to DPM would be less than significant based on the DEIR's conclusion that the Project's *criteria pollutant* emissions are less than significant.

The DEIR's health risk conclusion is unsupported for three reasons. First, DPM is not a criteria pollutant like PM<sub>10</sub> and PM<sub>2.5</sub>. Therefore, the DEIR relies on an analysis of the wrong pollutants to analyze health risk. DPM is a toxic air contaminant ("TAC") that is recognized by state and federal agencies, and atmospheric scientists, as causing severe respiratory disease, lung damage, cancer, and premature death. Air districts have recently recognized that "TACs present an even greater health risk than previously thought."<sup>105</sup> By contrast, standard criteria pollutants, which include both PM<sub>10</sub> and PM<sub>2.5</sub>, are defined under both federal and state laws as "criteria pollutants."<sup>106</sup> PM alone does not contain toxic chemicals. PM is simply defined as "very small solid or liquid particles that can be suspended in the atmosphere."<sup>107</sup> TACs, by contrast, are defined as "air pollutant[s] which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. Unlike regular particulate matter, DPM contains toxic chemicals which are not evaluated in a criteria pollutant analysis. The DEIR's attempt to rely on its criteria pollutant analysis to conclude that DPM emissions are insignificant is therefore a major error, and one which fails to provide any support for the DEIR's conclusion that the health risk posed by exposure to DPM is insignificant.

---

<sup>104</sup> DEIR Section IV.A Air Quality, p. IV.A-49.

<sup>105</sup> *California Bldg. Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 379.

<sup>106</sup> The seven criteria air pollutants are: ozone (O<sub>3</sub>); carbon monoxide (CO); nitrogen dioxide (NO<sub>2</sub>); sulfur dioxide (SO<sub>2</sub>); PM<sub>10</sub>; PM<sub>2.5</sub>; and lead (Pb).

<sup>107</sup> *CURE v. Mojave Desert Air Qual. Mgm't Dist.* (2009) 178 Cal. App. 4th 1225, 1231-32; see 40 C.F.R. § 50.6(c).

L4986-005acp

Second, the DEIR's failure to quantify the health risk from DPM exposure is unsupported. CEQA expressly requires that an EIR to discuss, inter alia, "health and safety problems caused by the physical changes" resulting from the project.<sup>108</sup> When a project results in exposure to toxic contaminants, this analysis requires a "human health risk assessment."<sup>109</sup> OEHHA<sup>110</sup> guidance also sets a recommended threshold for preparing an HRA of a construction period of two months or more.<sup>111</sup> Construction of the instant Project will last at least 24 months.

Third, the DEIR's conclusion that health risk is less than significant is unsupported by its own inclusion of mitigation measures to minimize the impacts from TAC emissions. The DEIR indicates that the Project would comply with the CARB Air Toxics Control Measure, which limits diesel-powered equipment and vehicle idling to no more than 5 minutes at a location, as well as with the CARB In-Use Off-Road Diesel Vehicle Regulation. Compliance with these measures "would minimize emissions of TACs during construction" to less than significant levels.<sup>112</sup> Because these measures are designed to reduce impacts, their function in the Project is as mitigation measures.<sup>113</sup> The DEIR fails to describe the extent of the Project's impacts prior to implementation of these measures, in violation of CEQA.<sup>114</sup> Since the DEIR relies on these measures to reduce adverse impacts, they must be also included as binding mitigation measures.<sup>115</sup> By ensuring compliance with such a measure in order to avoid significant impacts, the City is acknowledging that impacts from TAC emissions will be significant without mitigation. A health risk analysis is necessary to determine how significant those impacts will be and if mitigation measures are sufficient to avoid risks to public health.

---

<sup>108</sup> 14 CCR § 15126.2(a).

<sup>109</sup> *Sierra Club*, 6 Cal.5th at 520; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* ("Berkeley Jets") (2001) 91 Cal.App.4th 1344, 1369; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219–1220 (CEQA requires that there must be some analysis of the correlation between the project's emissions and human health impacts).

<sup>110</sup> OEHHA is the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. See OEHHA organization description, available at <http://oehha.ca.gov/about/program.html>.

<sup>111</sup> See "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: [http://oehha.ca.gov/air/hot\\_spots/hotspots2015.html](http://oehha.ca.gov/air/hot_spots/hotspots2015.html) ("OEHHA Guidance"), p. 8-18.

<sup>112</sup> DEIR Section IV.A Air Quality, p. IV.A-50.

<sup>113</sup> PRC §§ 21002.1(a)(b), 21100(b)(3); 14 CCR § 15126.4.

<sup>114</sup> *Id.*; *Lotus v. Dep't of Transp.* (2014) 223 Cal. App. 4th 645, 651-52.

<sup>115</sup> *Id.*

a. Substantial Evidence Shows that Operational Emissions Will Result in Potentially Significant Impacts to Public Health

Despite the DEIR's claim that Project operations will not result in any significant health risks from TAC emissions, the potential cancer risk from diesel exhaust emitted by the Project is significant and unmitigated.

Dr. Clark performed his own analysis using the DEIR's CalEEMod estimated emissions of 0.5046 lbs per day of fugitive PM<sub>2.5</sub> exhaust for the Project and 0.4615 lbs per day of fugitive PM<sub>2.5</sub> exhaust for the Project alternative.<sup>116</sup> His conclusions are at remarkable odds to those of the DEIR:

These emissions are equivalent to DPM emissions of 169.5 lbs per year to 184.2 lbs per year. Since the City has not attempted to assess what those impacts would be on the local community and in particular the impacts to the adjacent residences, I have prepared a screening assessment of the operational impacts reported in the CALEEMOD analyses for the project. Using the Bay Area Air Quality Management District's (BAAQMD) Health Risk Calculator, which calculates the adjusted risk and hazard impacts that can be expected with farther distances from the source of emissions, it is possible to quickly assess the impacts from the project on the adjacent neighbors. The model refines the screening values for cancer risk and PM<sub>2.5</sub> concentrations found in the BAAQMD's Stationary Source Screening Analysis Tool for permitted facilities which contain diesel internal combustion engines (primary source of DPM). The model is recommended by BAAQMD to assess the impacts from facilities where a comprehensive risk screening assessment has not been completed.

For the preferred project design, operational emissions of 0.5046 lbs per day of Fugitive PM<sub>2.5</sub> exhaust would result in cancer risks of 568 in 1,000,000, well in excess of BAAQMD's CEQA Air Quality Guidelines threshold of 10 in 1,000,000.<sup>117</sup> Operational emissions of 0.4615 lbs per day of Fugitive PM<sub>2.5</sub> exhaust would result in cancer

---

<sup>116</sup> Clark Comments, p. 8.

<sup>117</sup> BAAQMD CEQA Air Quality Guidelines May 2017, p. 2-5.  
L4986-005acp

risks of 519 in 1,000,000, also well in excess of BAAQMD's threshold of 10 in 1,000,000.<sup>118</sup>

The DEIR provides no substantial evidence in support of its claims that health risks from operational emissions are insignificant. Dr. Clark's analysis, meanwhile, uses data from the DEIR's own modeling files to show that cancer risks resulting from the Project would significantly exceed some agency thresholds.<sup>119</sup>

## **VI. THE DEIR FAILS TO CONSIDER AND ANALYZE CUMULATIVE IMPACTS**

CEQA requires an evaluation of cumulative impacts, defined as "two or more individual effects which, when considered together, are considerable."<sup>120</sup> Such impacts may "result from individually minor but collectively significant projects taking place over a period of time."<sup>121</sup> Lead agencies must consider whether a project's potential impacts, although individually limited, are cumulatively considerable.<sup>122</sup> "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."<sup>123</sup>

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 "projection contained in an adopted local, regional or statewide plan, or related planning document that describes or evaluates conditions contributing to the cumulative effect."<sup>124</sup> "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

---

<sup>118</sup> Clark Comments, pp. 7–8; see Clark Exhibits 1 & 2.

<sup>119</sup> BAAQMD's threshold is more appropriate than SCAQMD's in this instance because SCAQMD's Health Risk Calculator does not include diesel particulate matter, a major contributor of

<sup>120</sup> 14 C.C.R. § 15355; see also Staff Report, Attachment 10, pp. 894–896 (explaining IS/MND's failure to analyze cumulative impacts from habitat loss).

<sup>121</sup> 14 C.C.R. § 15355(b).

<sup>122</sup> PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

<sup>123</sup> CEQA Guidelines §15064(h)(1).

<sup>124</sup> 14 C.C.R. § 15130(b)(1).

incremental contribution to the cumulative effect is not cumulatively considerable.”<sup>125</sup>

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 DEIR fails to analyze the impacts the Project will have when considered with the more than 30 other projects within the vicinity that are planned, have been completed, or are under construction.<sup>126</sup>

### **A. The DEIR Fails to Disclose, Analyze, and Mitigate Cumulative Impacts to Air Quality**

The DEIR’s list of 20 projects within the Project site’s vicinity<sup>127</sup> omits more than 10 other projects, amounting to more than 3,000,000 square feet of nearby projects. The DEIR’s failure to account for all of the proposed and active construction projects in the Project’s vicinity reveals the erroneous existing baseline from which the DEIR’s entire analysis of cumulative air quality impacts follows.

Furthermore, the DEIR declines to perform any analysis of cumulative impacts from GHG emissions, stating that “the proximity of the Project to other GHG emission generating activities is not directly relevant to the determination of a cumulative impact because climate change is a global condition.”<sup>128</sup> It goes on to reason that, because the CAPCOA holds that GHG emissions are always cumulative due to the global nature of climate change, any analysis it has performed is necessarily a cumulative one, and any further analysis is unnecessary.<sup>129</sup> It concludes that “[d]ue to the complex physical, chemical, and atmospheric mechanisms involved in global climate change, there is no basis for concluding that the Project’s increase in annual GHG emissions would cause a measurable change in global GHG emissions necessary to influence global climate change.”<sup>130</sup> The DEIR’s statement that “[t]he GHG emissions of the Project alone

---

<sup>125</sup> *Id.*; *see id.* § 15130(a) (stating that the lead agency shall describe its basis for concluding that an incremental effect is not cumulatively considerable).

<sup>126</sup> Clark Comments, p. 2; <https://downtownla.com/maps/development/in-the-pipeline/arts-district/all> (last accessed Jan. 22, 2021).

<sup>127</sup> DEIR Appendix L.1 Traffic Study, pp. 41–42.

<sup>128</sup> DEIR Section IV.D Greenhouse Gases, p. IV.D-55.

<sup>129</sup> *Id.*

<sup>130</sup> DEIR Section IV.D Greenhouse Gases, p. IV.D-43.  
L4986-005acp



would not likely cause a direct physical change in the environment”<sup>131</sup> is a direct violation of the CEQA Guidelines’ mandate that a lead agency explain that the project’s “incremental contribution to the cumulative effect is not cumulatively considerable.”<sup>132</sup> Moreover, CEQA describes GHG impacts as inherently cumulative impacts, and does not excuse the lead agency from addressing these impacts as cumulative impacts.<sup>133</sup> Merely stating that a project’s impacts are not significant because it is “unlikely” that they are is not sufficient to support that conclusion.

The provision of the CEQA Guidelines that permitted agencies to conclude air emissions would be cumulatively insignificant because they are small in the grand scheme of things has been struck down by the Courts. Indeed, as was recognized in *CBE v. CRA* and *Kings County Farm Bureau*, the relevant analysis is not the relative amount of emissions from the Project compared with other emissions, but “whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.”<sup>134</sup> As Dr. Clark explained in his comment letter, the Project’s emissions are significant and, when considered along with those from nearby projects, will contribute heavily to impacts to air quality and public health.<sup>135</sup>

## VII. CONCLUSION

An EIR “protects not only the environment but also informed self-government” by informing the public and its responsible officials of the environmental consequences of government decisions before they are made.<sup>136</sup> The DEIR fails to fulfill CEQA’s informational and procedural requirements in multiple ways, including in its description of crucial Project details and establishing an accurate existing baseline, as well as from all analyses, conclusions, and proposed mitigation derived therefrom. As such, the extent of the Project’s adverse

---

<sup>131</sup> *Id.*

<sup>132</sup> 14 CCR §§ 15130(a); (b)(1); 15064.4(b).

<sup>133</sup> 14 CCR § 15064.4(b).

<sup>134</sup> *Id.* at 118–121; *Kings County Farm Bureau*, 221 Cal.App.3d at 718.

<sup>135</sup> Clark Comments, pp. 3–4; <https://downtownla.com/maps/development/in-the-pipeline/arts-district/all> (last accessed Jan. 22, 2021).

<sup>136</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; see also e.g., Pub. Resources Code, § 21061 (“The purpose of an [EIR] is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”)

L4986-005acp

January 25, 2021  
Page 26

environmental impacts is hidden from public view. The City cannot rely on the document to determine if the Project's benefits outweigh its environmental impacts or if those impacts have been lessened or avoided to the extent feasible.

The DEIR must be revised and recirculated, consistent with CEQA's Legislative intent and substantive requirements.

Sincerely,



Kendra Hartmann

KDH:acp

Enclosures

L4986-005acp

