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October 13, 2021

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**VIA EMAIL ONLY**

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City Planning Department  
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**Re: Comments on the 655 Mesquit Project; Case Number: ENV-2020-6829-EAF CPC-2020-6828-GPA-ZC-HD-SPR-MCUP**

Dear Ms. Escobar and Mr. Bertoni:

These comments are submitted on behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”) regarding the Mitigated Negative Declaration (“MND”) prepared by the City of Los Angeles (“City”) for the 655 Mesquit Street Project (Case No. CPC-2020-6828-GPA-ZC-HD-SPR-MCUP; Environmental Case No. ENV-2020-6829-EAF) (“Project”), proposed by 655 Mesquit, LLC (“Applicant”).

The Project proposes to redevelop a surface parking lot on the existing 640 S. Santa Fe Avenue site (“Project Site”) into a 14-story commercial building with approximately 188,954 square feet of floor area comprised of 184,629 square feet of office uses and approximately 4,325 square feet of ground floor commercial uses.<sup>1</sup>

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<sup>1</sup> City of Los Angeles Department of City Planning, Mitigated Negative Declaration: 655 Mesquit Street Project Case Number: ENV-2020-6829-EAF, CPC-2020-6828-GPA-ZC-HD-SPR-MCUP L5691-004acp

The Project Site is located on Assessor Parcel Number (APN) 5164-015-022 at 635 - 657 South Mesquit Street, 632 - 648 South Santa Fe Avenue, and 1585 East Jesse Street, Los Angeles, CA 90021. The Project would result in a total proposed floor area of 296,178 square feet for the entire Project Site, resulting in a total Floor Area Ratio (“FAR”) of 4.3:1. The Project site is located within the Central City North Community Plan Area within the City. The Project site is under the General Plan Designation Heavy Manufacturing and is zoned as M3-1-RIO within the River Implementation Overlay District (“RIO”).

We have reviewed the MND, its technical appendices, and reference documents with assistance of CREED LA’s expert consultant, whose comments and qualifications are attached. Based on our review of the MND, it is clear that the MND fails as an informational document under CEQA and lacks substantial evidence to support its conclusions that the Project’s significant impacts would be mitigated to the greatest extent feasible.

There is also substantial evidence supporting a fair argument that the Project’s potentially significant environmental impacts are far more extensive than disclosed in the MND. CREED LA and their expert consultant have identified numerous potentially significant impacts that the MND either mischaracterizes, underestimates, or fails to identify. Moreover, many of the mitigation measures described in the MND will not, in fact, mitigate impacts to the extent claimed.

We prepared these comments with the assistance of air quality and hazards expert James Clark, Ph.D. Dr. Clark’s technical comments and curriculum vitae are attached hereto as Exhibit A.<sup>2</sup> Dr. Clark concludes that the City failed to conduct adequate analysis regarding the hazards and hazardous materials on the Project site. Dr. Clark also determined that Project construction emissions will exceed applicable significance thresholds, and that Greenhouse Gas (“GHG”) emissions from Project construction and operation are underestimated. The MND fails to accurately disclose the severity of these impacts and fails to effectively mitigate them.

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(September 2021) <https://planning.lacity.org/odocument/4ff91485-df08-4bc2-8f02-87f9c4255ab1/ENV-2020-6829.pdf>.

<sup>2</sup> See **Exhibit A**, James Clark, Comments on 655 Mesquit Street Project Case Number: ENV-2020-6829-EAF CPC-2020-6828-GPA-ZC-HD-SPR-MCUP (“Clark Comments”).

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Dr. Clark's comment letter and all attachments thereto are incorporated by referenced as if fully set forth herein.<sup>3</sup> The City must address and respond to the expert comments separately.

## I. STATEMENT OF INTEREST

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

Individual members of CREED LA and its member organizations including John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias 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. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

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<sup>3</sup> CREED LA reserves the right to supplement these comments, and to file further comments at any and all future proceedings and hearings related to the Project. 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.

## I. LEGAL BACKGROUND

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.<sup>4</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>5</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>6</sup>

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.<sup>7</sup> CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the “fair argument” standard. Under that standard, a lead agency “shall” prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.<sup>8</sup>

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

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

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<sup>4</sup> See Pub. Resources Code § 21000; CEQA Guidelines § 15002.

<sup>5</sup> *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).

<sup>6</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>7</sup> See Pub. Resources Code § 21100.

<sup>8</sup> Pub. Resources Code §§ 21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

record before the public agency that the project, as revised, *may* have a significant effect on the environment.<sup>9</sup>

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”<sup>10</sup> The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.<sup>11</sup> An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.<sup>12</sup>

“Substantial evidence” required to support a fair argument is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”<sup>13</sup> According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064, subdivision (f):

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

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.”<sup>14</sup> Deferring

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<sup>9</sup> Pub. Resources Code § 21064.5 (emphasis added).

<sup>10</sup> See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

<sup>11</sup> *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

<sup>12</sup> *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

<sup>13</sup> CEQA Guidelines § 15384(a).

<sup>14</sup> CEQA Guidelines § 15126.4(a)(2).

formulation of mitigation measures to post-approval studies is generally impermissible.<sup>15</sup> Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.<sup>16</sup> If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.<sup>17</sup> Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report's recommendations is insufficient to meet the standard for properly deferred mitigation.<sup>18</sup>

With respect to this Project, the MND fails to satisfy the basic purposes of CEQA. The MND fails to adequately disclose, investigate, and analyze the Project's potentially significant impacts, and fails to provide substantial evidence to conclude that impacts will be mitigated to a less than significant level. Because the MND lacks basic information regarding the Project's potentially significant impacts, the MND's conclusion that the Project will have a less than significant impact on the environment is unsupported.<sup>19</sup> The City failed to gather the relevant data to support its finding of no significant impacts. Moreover, substantial evidence shows that the Project may result in potentially significant impacts. Therefore, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

## II. THE MND FAILS TO PROVIDE A COMPLETE AND ACCURATE PROJECT DESCRIPTION

CEQA requires that an EIR "set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact."<sup>20</sup> Similarly, an MND must present a complete and accurate description of the project

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<sup>15</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code § 21061.

<sup>16</sup> *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical*, *supra*, 29 Cal.App.4th at p. 1604, fn. 5.

<sup>17</sup> *Gentry*, 36 Cal.App.4th at 1393.

<sup>18</sup> *Id.*

<sup>19</sup> PRC § 21064.5.

<sup>20</sup> *San Joaquin Raptor Rescue Center v. County of Merced* 149 Cal.App.4th 645, 654 (citing 14 C.C.R. § 15124).

under consideration.<sup>21</sup> “The scope of the environmental review conducted for the initial study must include the entire project ... [A] correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA.”<sup>22</sup> A negative declaration is “inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis. An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency’s action. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance.”<sup>23</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>24</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 does not mean each separate governmental approval.<sup>25</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>26</sup> As explained below, the Clark Comments highlight numerous deficiencies in the MND’s Project description.

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

The MND states that the Project will allow “the sale of full line alcoholic beverages within four restaurants and bars” on the Project site.<sup>27</sup> However, the

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<sup>21</sup> 14 C.C.R. § 15063(d)(1) (requiring an initial study to include a description of the project).

<sup>22</sup> *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267 (internal quotations and citations omitted).

<sup>23</sup> *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406 (internal quotations and citations omitted).

<sup>24</sup> 14 C.C.R. 15378(a).

<sup>25</sup> CEQA Guidelines § 15378.

<sup>26</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>27</sup> MND, p. 50.

Project description fails to identify the accompanying activities that would result in noise impacts, such as live or recorded music, or boisterous patrons that may impact sensitive receptors at the AMP Loft property.

The AMP Lofts is a multi-family residential property located 260 feet southwest of the Project site.<sup>28</sup> The resulting noise from Project operation may require mitigation to reduce adverse impacts to neighboring residents, specifically the AMP Lofts residents. The MND fails to disclose whether the Project anticipates the use of sound systems, alcohol on balconies on the upper floors and in the paseo courtyard, and other sources of significant noise impacts, thus failing to disclose a potentially significant operational noise impact.

The MND's failure to adequately describe the operational components of the Project renders the analysis that follows incomplete and underestimates the impacts the Project is likely to have on the ambient environment and surrounding residences. Mitigation measures, such as retrofitting windows and erecting sound barriers, may be necessary to reduce these impacts, but are absent from the MND. The MND's conclusion that the Project will result in less than significant operational noise impacts, with no mitigation required, is not supported by substantial evidence.

### **III. AN EIR IS REQUIRED FOR THE PROJECT BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT WILL HAVE SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS**

A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.<sup>29</sup> “[S]ignificant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.”<sup>30</sup> An effect on the environment need not be “momentous” to meet the

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<sup>28</sup> *Id.* at 81; 82.

<sup>29</sup> PRC § 21151; 14 CCR § 15064(f); *Citizens for Responsible Equitable Env'tl Dev. v. City of Chula Vista* (“*CREED*”) (2011) 197 Cal.App.4th 327, 330-31; *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319 (“*CBE v. SCAQMD*”).

<sup>30</sup> PRC § 21068; 14 CCR § 15382; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1581.



CEQA test for significance; it is enough that the impacts are “not trivial.”<sup>31</sup> Substantial evidence, for purposes of the fair argument standard, includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”<sup>32</sup>

CREED LA’s experts have presented direct and substantial evidence raising a fair argument that the Project will have significant impacts on air quality, GHG emissions, noise, and hazardous materials. An EIR must be prepared to further evaluate and mitigate the significant impacts to less than significant levels.

### **A. The City Lacks Substantial Evidence to Support the MND’s Conclusion that the Project Would Result in Less Than Significant Health Risk Impacts**

CEQA requires a detailed analysis of the public health impacts from air pollutants that would be generated by a development project.<sup>33</sup> The City’s analysis of the Project’s health risk from construction emissions is inadequate. The MND concludes, absent substantial evidence, that the Project’s construction air quality emission impacts would be less than significant.<sup>34</sup> The City did not, however, conduct a health risk analysis (“HRA”) for the Project. Instead, the City concludes, absent substantial evidence, that “health risks associated with DPM emissions during construction would be less than significant” due to the short-term exposure of sensitive receptors.<sup>35</sup> Dr. Clark concluded that the City’s assertion that the 24-month exposure is not significant, is not supported by substantial evidence. Dr. Clark emphasized that “[e]ven brief exposures to the [toxic air contaminants] could lead to the development of adverse health impacts over the life of an individual.”<sup>36</sup>

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<sup>31</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.

<sup>32</sup> PRC § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.

<sup>33</sup> *Sierra Club*, 6 Cal.5th at 518–522; 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>34</sup> MND, p. 77.

<sup>35</sup> *Id.* at 84.

<sup>36</sup> Clark Comments, p. 11.

Toxic air contaminants (“TACs”) from Project construction may impact sensitive receptors in the vicinity of the Project site including:

- 1) AMP Lofts, 695 S. Santa Fe Avenue (multi-family residential)
- 2) Artists’ Lofts, 2101 7th Street (multi-family residential)
- 3) Brick Lofts, 652 Mateo Street (multi-family residential)”<sup>37</sup>

Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. TACs are airborne substances that are capable of causing short-term (acute) and/or long-term (chronic or carcinogenic, i.e., cancer causing) adverse human health effects (i.e., injury or illness). TACs include both organic and inorganic chemical substances. The current California list of TACs includes approximately 200 compounds, including particulate emissions from diesel-fueled engines.

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.<sup>38,39,40</sup> Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.<sup>41</sup> Exposure to DPM increases the risk of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls,

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<sup>37</sup> City of Los Angeles. 2021. Initial Study/Mitigated Negative Declaration For 655 Mesquit Street Project. Case Number ENV-2020-6829-EAF, CPC-2020-6828-GPA-ZC-HD-SPR-MCUP. Pg 81.

<sup>38</sup> Clark Comments, p. 11; California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB%20identified%20DPM,and%20other%20adverse%20health%20effects.>

<sup>39</sup> Clark Comments, p. 11; U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

<sup>40</sup> Clark Comments, p. 11; Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; [http://www.edf.org/documents/4941\\_cleanerdieselhandbook.pdf](http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf), accessed July 5, 2020.

<sup>41</sup> Clark Comments, p. 11; California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

immunological allergic reactions, and airway constriction.<sup>42</sup> DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM<sub>2.5</sub> and PM<sub>10</sub>.<sup>43</sup>

While the potential exposure period for the closest sensitive receptor may be only 24 months, the inherent toxicity of the TACs requires the City to first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern.<sup>44</sup> Following that analysis, then the City can make a determination of the relative significance of the emissions. The City's failure to perform such an analysis is clearly a major flaw in there MND and may be placing the residents of the adjacent structures at risk from the construction and operational phases of the Project.<sup>45</sup>

The MND lacks substantial evidence to support its conclusion that the Project would result in less than significant health risks from Project construction and operational TACs. The City must prepare an HRA in an EIR for the Project to quantify the Project's health risk impacts and mitigate any significant impacts to the greatest extent feasible.

### **B. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Health Risk from Operational Emissions**

The City's analysis of the Project's operational TAC emissions is flawed.<sup>46</sup> The MND states that the only potential source of toxic air contaminants generated by the Project would be diesel particulate matter ("DPM"), which would be generated by motor vehicles traveling to and from the Project Site. Dr. Clark

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<sup>42</sup> Clark Comments, p. 11; Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.

<sup>43</sup> Clark Comments, p. 11; Health & Safety Code § 39655(a) (defining "toxic air contaminant" as air pollutants "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. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant.")

<sup>44</sup> Clark Comments, p. 13.

<sup>45</sup> Clark Comments, p. 13.

<sup>46</sup> Clark Comments, p. 6.

explains that operation of the Project would generate a relatively small amount of ongoing operational DPM emissions from a minimal number of diesel-fueled vehicles (e.g., delivery trucks), as compared to an industrial oil refinery facility that has numerous heavy-duty industrial-sized equipment and industrial processes.” These statements are not supported by substantial evidence. In reviewing the CalEEMod analysis of the Project, Dr. Clark found that the emergency backup generator is “the most significant source of diesel emissions from the Project site.”<sup>47</sup> The MND fails to adequately analyze and mitigate impacts associated with the emergency backup generator.

Dr. Clark concluded that the diesel backup generator may be permitted to operate up to 200 hours per year, thus the City’s assertion that the backup generator would not exceed 12 hours per year is not supported by substantial evidence.<sup>48</sup> Dr. Clark further determined that the usage of the backup generator may even exceed 200 hours per year, if an extreme heat event occurs. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury.<sup>49</sup>

With the increased instances of extreme heat events, Dr. Clark concludes that the use of the backup generator would result in potentially significant DPM emissions which exceed thresholds. The City must prepare an EIR to analyze the additional operational impacts associated with the emergency backup generator that were not accounted for in the air quality analysis in the MND, and to mitigate any potentially significant health risks to less than significant levels.

### **C. The MND Lacks Substantial Evidence to Support the MND’s Conclusion that the Project Would Result in Less Than Significant Cumulative Air Quality Impacts**

The MND fails to adequately analyze the cumulative impacts associated with Project construction, and the cursory analysis which the MND purports to rely on is unsupported by substantial evidence.

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<sup>47</sup> Clark Comments, p. 7.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

The MND recognizes that “[a] significant impact may occur if a project adds a considerable cumulative contribution to federal or State non-attainment pollutants.”<sup>50</sup> The California Air Resources Board determined the South Coast Air Basin, the air basin encompassing the Project, is in Non-Attainment for ozone (O<sub>3</sub>), and particulate matter (“PM”) PM<sub>10</sub>, and PM<sub>2.5</sub>.<sup>51</sup> Thus, a cumulative incremental increase in any of these pollutants may result in significant cumulative air quality impacts.

The MND states that the Project would not exceed the daily air quality emission thresholds during the construction or operational phases of the Project. The MND relies on “the approval of the requested discretionary General Plan Amendment and Height District change, [such that] the Project would continue to conform to the zoning and land use designations for the Project site as identified in the General Plan, and as such, would not add emission to the Basin that were not already accounted for in the approved AQMP.”<sup>52</sup> However, this assertion is not supported by a quantitative analysis. The resultant analysis regarding cumulative impacts is therefore not based on substantial evidence.

The MND also fails to analyze the cumulative impacts associated with the General Plan Amendment which will increase density in the Planning Area which will, in turn, result in increased air quality impacts. In particular, the MND fails to quantify the reasonably foreseeable emissions increases, noise, and transportation impacts that may result from the increased density resultant from increasing the FAR from 3:1 to 4.5:1.

Further, the MND describes the Project’s construction impacts as temporary, occurring over a 24-month period, with final buildout occurring in 2025.<sup>53</sup> Dr. Clark determines that two years’ worth of construction emissions is likely to have significant cumulative impacts, and that the MND fails to provide substantial evidence that the Project construction impacts are temporary and less than significant.<sup>54</sup>

This omission in the MND’s analysis is further demonstrated by the MND’s failure to meaningfully analyze identified cumulative construction projects. The

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<sup>50</sup> MND, p. 80.

<sup>51</sup> MND, p. 68 - 69.

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<sup>53</sup> MND, p. 76.

<sup>54</sup> Clark Comments, p. 11.

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Project is being developed “in conjunction with 26 related projects,” three of which would have concurrent construction with the Project.<sup>55</sup> The MND fails to list numerous other nearby projects, which constitutes more than 500,000 square feet of construction overlapping in time.<sup>56</sup> The MND recognizes that “Development of the Project in conjunction with related projects in the Project Site vicinity would result in an increase in construction and operational emissions in an already urbanized area of the City of Los Angeles.”<sup>57</sup> But the MND later concludes, without substantial evidence, that “cumulative air quality impacts would be less than significant.”<sup>58</sup>

The MND’s failure to account for all of the proposed and active construction projects results is both a flawed baseline analysis and a failure to analyze the Project’s cumulative air quality impacts. The MND concludes that the cumulative impacts with regard to air quality would be less than significant, therefore no mitigation measures are required.<sup>59</sup> This assertion is not based on substantial evidence in the record, in violation of CEQA. The City must draft an EIR which provides a legally adequate cumulative impact analysis for the Project.

#### **D. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts From Hazards on the Project Site**

The City’s analysis of the Project impacts from hazards and hazardous material is inadequate and unsupported. The MND relies on the Phase I and Phase II Environmental Site Assessment (“ESA”) reports, which in turn rely on outdated and faulty analysis.<sup>60</sup> Dr. Clark found that the City’s reliance on a Draft Phase I Environmental Site Assessment is misplaced. The site may have significant contamination from its previous use as a “machine and metal stamping shop with paint booths and the railroad line.”<sup>61</sup> Project construction will require extensive earthmoving activities to excavate 2 levels of underground parking. Until the contamination onsite is further investigated, the City cannot conclude that the

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<sup>55</sup> MND, p. 189.

<sup>56</sup> Under Construction – An Ever-Changing Skyline (accessed Oct. 13, 2021) <https://downtownla.com/maps/development/under-construction>.

<sup>57</sup> *Id.* at 86.

<sup>58</sup> *Id.* at 87.

<sup>59</sup> MND p. 87.

<sup>60</sup> Clark Comments, p. 3.

<sup>61</sup> MND, p. 143.

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Project's impacts from hazards on the Project site are less than significant. The City's assertion that Hazards impacts are less than significant is therefore not supported by substantial evidence.

Dr. Clark found that impacts from vapor intrusion may be significant and unmitigated.<sup>62</sup> The Applicant consulted EFI Global to conduct a Phase II subsurface investigation. EFI then utilized the Johnson-Ettinger ("J/E") Vapor Intrusion Model to quantify potential vapor intrusion on the Project site. Based on the J/E Vapor Intrusion Model, EFI concluded that the detected soil vapor levels did not represent an unacceptable risk to human health. As Dr. Clark explains, the California Department of Toxic Substances Control has since recommended that "Site-specific attenuation factors derived from mathematical models, such as the Johnson and Ettinger model, are not recommended for the initial screening of occupied buildings."<sup>63</sup> The Applicant's reliance on this analysis, and the City's conclusion that the hazard impacts are less than significant is not based on substantial evidence.

Dr. Clark conducted accurate modeling for the Project's soil vapor inhalation risk. Dr. Clark concluded that, for chemicals of concern on the Project site, the maximum risk of soil vapor intrusion exceeds the significance threshold for carcinogenic chemicals of 10 in 1,000,000 for commercial workers onsite. Dr. Clark further concluded that the maximum hazard index from soil vapor intrusion exceeds the significance threshold of 1 for commercial workers onsite.<sup>64</sup> These are significant impacts which the MND fails to disclose. Dr. Clark concludes that the City must correct these errors and address these significant hazardous waste issues on site by implementing a remedial strategy to remove the residual soil vapor, mitigating the risk by requiring the installation of vapor barriers and/or vapor remedial systems onsite in an EIR.<sup>65</sup>

### **1. The MND Fails to Mitigate Hazardous Materials Risks to Less than Significant Levels.**

The MND contains no mitigation measures that address the potential presence of hazardous materials on the Project site which may expose construction

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<sup>62</sup> Clark Comments, p. 4.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 5.

workers and the community to hazardous materials. Dr. Clark recommends the installation of vapor barriers and/or vapor remedial systems onsite. Until an adequate investigation is conducted, and any issues addressed and mitigated, the City cannot conclude that the Project would have a less than significant impact from hazards on the Project site.

Further, Dr. Clark explains that the recommendations provided in the Geotechnical Report are not sufficient to reduce the impact of soil erosion and loss of topsoil to less than significant levels.<sup>66</sup> The Geotechnical Report's recommendations are not binding mitigation under CEQA. CEQA requires mitigation measures "must be fully enforceable through permit conditions, agreements, or other legally binding instruments."<sup>67</sup> An EIR must be prepared that provides enforceable mitigation to address potentially significant impacts from hazards.

### **E. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Greenhouse Gas Impacts**

The City's analysis of the Project's GHG emissions is inadequate. The MND concludes, contrary to substantial evidence, that the Project would have a less than significant impact related to "[g]enerat[ing] greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment" and "[c]onflict[ing] with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases."<sup>68</sup>

Substantial evidence supports a fair argument that the Project may result in generating GHG emissions in exceedance of allowable thresholds, and that the Project contravenes applicable policies and plans aimed at reducing GHGs emissions. "L.A.'s Green New Deal Pathway calls for the steepest near-term reductions in GHG emissions from building energy use than any other sector and cuts 50% of emissions by 2025 and 100% by 2050."<sup>69</sup> L.A.'s Green New Deal provides for the reduction of municipal GHG emissions 55% by 2025 and 65% by 2035 from 2008 baseline levels, allowing the City to reach carbon neutrality by 2045.<sup>70</sup> The

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<sup>66</sup> MND, p. 118.

<sup>67</sup> 14 C.C.R § 15126.4.

<sup>68</sup> MND, p. 121.

<sup>69</sup> L.A.'s Green New Deal, Sustainable City pLAn (2019)

[https://plan.lamayor.org/sites/default/files/pLAn\\_2019\\_final.pdf](https://plan.lamayor.org/sites/default/files/pLAn_2019_final.pdf)

<sup>70</sup> *Id.* at p. 11.

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Project does not comport with this trajectory, in fact, the Project directly contravenes this goal, resulting in potentially significant, unmitigated GHG impacts.

The City must prepare an EIR to adequately analyze and mitigate potentially significant GHG impacts. The EIR should include mitigation measures to reduce the Project's GHG and air quality impacts to a less than significant level. CREED's experts recommend numerous measures, including:

- Require implementation of Tier 4 diesel control measures for off-road construction equipment and generators powered by diesel engines;
- Repower or replace older construction equipment engines;
- Install retrofit devices on existing construction equipment;
- Use electric and hybrid construction equipment;
- Institute a heavy-duty off-road vehicle plan;
- Reduce vehicle miles traveled by increasing transit accessibility;
- Provide electric vehicle charging stations/parking;
- Implement an employee parking "cash-out" program;
- Implement transit access improvements; and
- Expand the transit network.

The City should implement these mitigation measures in an EIR to adequately mitigate all potentially significant GHG and air quality impacts from Project construction and operation.

#### **F. The MND Lacks Substantial Evidence to Support Its Conclusion that the Project Would Result in Less Than Significant Transportation Impacts**

The City concludes that the MND need not analyze the potentially significant impact from traffic because the VMT Calculator Tool found an initially significant

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VMT per employee, but with mitigation consisting of charging for parking, providing bike parking, and including ride-share matching and other transportation demand management strategies, the VMT is brought below the significance threshold. But, “[a] Project that is below the County’s thresholds based on VMT per capita (residential projects), VMT per employee (office projects), or VMT per service population (other land uses) and does not have a VMT impact compared to baseline conditions would also not have a cumulative impact as long as it is aligned with long-term environmental goals and relevant plans.”<sup>71</sup> Here, the Project is not aligned with long-term environmental goals of the City of Los Angeles, the County of Los Angeles, or the State of California, and the Project is not aligned with all relevant plans.

For example, “L.A.’s Green New Deal pathway calls for deep reductions in GHG emissions from the transportation sector, and cuts 25% of emissions by 2025 and 100% of on-road emissions by 2050. Reductions in transportation emissions are accounted for through the electrification targets in this chapter as well as through mode shift targets in the Mobility and Public Transit chapter.” The Project’s traffic impacts contravene the goals laid out in the L.A.’s Green New Deal and therefore constitute a significant impact under CEQA.

The MND’s VMT calculations are not supported by substantial evidence. The MND relies on VMT calculations that are not fully available for public scrutiny and review. This informational deficiency disallows public scrutiny of the VMT calculation to determine the significance of traffic impacts associated with the Project. The City must draft an EIR to adequately analyze and mitigate potentially significant impacts associated with traffic.

#### **IV. THE CITY LACKS SUBSTANTIAL EVIDENCE TO APPROVE THE PROJECT’S LAND USE PERMITS**

The Project requires a number of discretionary entitlements and related approvals under local City plans and codes, including a General Plan Amendment to modify the Central City North Community Plan to include the boundaries and development standards of the Project, pursuant to the City of Los Angeles Municipal Code (“LAMC”) § 11.5.6; a Height District change from the existing Height District 1 to Height District 2, pursuant to LAMC § 12.32F; a Master

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<sup>71</sup> Los Angeles County, Los Angeles County Senate Bill (SB) 743 Implementation and CEQA Updates Report (June 2020) <https://www.ladpw.org/traffic/docs/Implementation-Report.pdf>.  
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Conditional Use Permit to permit the sale of full line alcoholic beverages within four restaurants and bars, pursuant to LAMC § 12.21 W.1; Site Plan Review for a project that results in an increase of 50,000 gross square feet or more of nonresidential uses, pursuant to LAMC § 16.05; and a Vesting Tentative Tract Map pursuant to LAMC § 17.03 and 17.15.<sup>72</sup>

Each permit requires the City to make findings regarding land use consistencies and/or environmental factors. As discussed herein, there is substantial evidence supporting a fair argument that the Project has potentially significant, unmitigated impacts on air quality, GHG, hazards, and noise, that the MND fails to accurately disclose and fails to mitigate to less than significant levels. These unmitigated impacts create inconsistencies with several of the permits required for the Project.

Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy constitutes a significant land use impact and, in itself, indicates a potentially significant impact on the environment.<sup>73</sup> Any inconsistencies between a proposed project and applicable plans must be discussed in an EIR.<sup>74</sup> A project's inconsistencies with local plans and policies also constitute significant impacts under CEQA.<sup>75</sup> The City must circulate an EIR to adequately disclose and mitigate the significant land use impacts discussed below.

### **A. General Plan Amendment and Height District Change**

The Project Applicant is seeking a General Plan Amendment to modify footnotes 1 and 6 of the Central City North Community Plan.<sup>76</sup> Footnote 1 of the Central City North Community Plan limits the Project Site to Height District No. 1. Footnote 6 states that development exceeding an FAR of 1.5:1 up to 3:1 on properties designated as Height District No.1 may be permitted through a Zone Change Height District Change procedure, including environmental clearance. The

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<sup>72</sup> MND, p. 50.

<sup>73</sup> See, *Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.

<sup>74</sup> 14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).

<sup>75</sup> *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177; see also, *County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376.

<sup>76</sup> MND, p. 30.

requested Zone Change Height District Change would modify both footnotes to include the proposed boundaries and development standards of the Project.

With approval of the Height District Change, the allowable FAR would increase from 1.5:1 to 4.5:1, resulting in a development potential of up to 310,018 square feet on the Project Site. The Project would create approximately 188,954 new square feet of developed floor area. Combined with the 107,224 square feet of existing floor area from the 640 S. Santa Fe Avenue building, the total proposed floor area across the Project Site would be 296,178 square feet, resulting in a total FAR of 4.3:1.

The General Plan Amendment would result in a permanent change that impacts the entire Community Plan Area, and is not limited to the Project site. The General Plan Amendment would result in a higher FAR allowed in the Central City North Community Plan with a Height District Change than is currently allowed under Footnotes 1 and 6. Higher floor area ratios result in denser construction. The MND lacks analysis of the impacts that the General Plan Amendment would have from increased development density and associated environmental and public health impacts that would result in the Central City North Community Plan Area from authorizing a higher FAR.

The MND also lacks substantial evidence to demonstrate that the Project satisfies the mandatory requirements for approving a General Plan Amendment. Under Section 556 of the City Charter, in order to amend the General Plan, the “City Planning Commission and the Council shall make findings showing that the action is in substantial conformance with the purposes, intent and provisions of the General Plan.”<sup>77</sup> “Once a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be ‘in harmony’ with the policies stated in the plan.”<sup>78</sup> It is the role of the City to determine the Project’s consistency with the General Plan, not to make the General Plan consistent with the Project.

Here, the proposed Project violates the existing General Plan, thus necessitating a General Plan Amendment to allow the Project to proceed. The MND lacks a detailed analysis of the impacts associated with the increased density that would be authorized by the Project’s increased FAR, and lacks an analysis of the

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<sup>77</sup> City of Los Angeles Charter § 556.

<sup>78</sup> *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 638. L5691-004acp

impacts associated with the incremental increases in density that could subsequently be authorized under subsequent Height District Changes in the Central City North Community Plan once Footnotes 1 and 6 are amended to authorize FAR of up to 4.5:1. Impacts associated with increased residential and commercial density that should have been analyzed in the Project's CEQA document include increased air quality impacts, noise, transportation impacts, and impacts on public services, to name a few. An EIR is required to analyze and mitigate the full extent of the Project's impacts from the proposed General Plan Amendment.

Finally, the MND fails to include evidence that would support the approval of a General Plan amendment pursuant to LAMC Section 11.5.6(B). Pursuant to this section, the LAMC would not restrict adoption of a General Plan Amendment which provides for an exclusively local work force at prevailing wage, and provides affordable housing.<sup>79</sup> Since the MND lacks evidence demonstrating that these factors will be met, the General Plan amendment is not clearly eligible for approval under the LAMC.

The City failed to adequately analyze and mitigate the impacts associated with nonconformance with the existing General Plan and the City failed to analyze potentially significant impacts associated with this General Plan Amendment, in violation of CEQA. The City must prepare an EIR to adequately analyze and mitigate all impacts associated with the General Plan Amendment and Height District Change.

## **B. Master Conditional Use Permit Approval for the Sale of Alcohol**

The Project must secure approval pursuant to LAMC Section 12.24-W,1 for the sale and dispensing of alcoholic beverages for on-site consumption for up to 4 establishments, for a total of up to 15,005 square feet of floor area.<sup>80</sup> Section 12.24-W,1, however, requires that the Zoning Administrator shall find, among other things, that that the proposed use “will not adversely affect the welfare of the pertinent community.”<sup>81</sup>

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<sup>79</sup> LAMC § 11.5.6(B)(2), (3).

<sup>80</sup> MND, p. 50.

<sup>81</sup> LAMC Section 12.24.W.1(a)(1).

The potential impacts from noise on neighboring residences from establishments serving alcohol can be significant. Noise from boisterous patrons and music being played on the Project Site will likely have an impact on the residences at the AMP Lofts and other sensitive receptors, and could impact homes' interiors since windows have poor low-frequency attenuation. The resulting noise from these activities may require mitigation to reduce adverse impacts to neighboring residents.

The MND fails to disclose whether the Project anticipates the use of sound systems, alcohol on balconies on the upper floors and in the paseo courtyard, and other sources of significant noise impacts, and fails to analyze whether the establishments serving alcohol will adversely affect the welfare of the pertinent community. The MND thus does not provide the substantial evidence to support the required findings that must be made for approval of a Master Conditional Use Permit for the sale and dispensing of alcohol to be consumed at the site. The City must prepare an EIR which adequately analyzes and mitigates impacts associated with alcohol sales on the Project site.

### C. Vesting Tentative Tract Map

Pursuant to LAMC Sections 17.03 and 17.15, the City requires a Vesting Tentative Tract Map. But, neither the MND nor the appendices provide the Vesting Tentative Tract Map for public review. CEQA requires a lead agency to provide sufficient information to foster informed decision making and public participation. The court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* determined that “[t]he data in the EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project.”<sup>82</sup> Further, “information scattered here and there in EIR appendices or a report buried in an appendix, is not a substitute for a good faith reasoned analysis.”<sup>83</sup> The requirement of a detailed analysis ensures that stubborn problems or serious criticism are not “swept under the rug.”<sup>84</sup>

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<sup>82</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.

<sup>83</sup> *Id.*, quoting *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239, quoting *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 723.

<sup>84</sup> *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357.  
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A Vesting Tentative Map should have been provided for public scrutiny in this case. A Vesting Tentative Map would have elucidated the real-world impacts of the Project. Further, LAMC Section 17.15(B)(1)(a) requires that “[i]f it is known at the time of filing that an additional approval... is necessary, the application for such additional approval shall be filed prior to or simultaneously with the vesting tentative map.”<sup>85</sup> The Vesting Tentative Map was not made available for public review along with the MND. This violation of the LAMC constitutes a significant impact under CEQA, and an informational deficiency under CEQA. An EIR should be prepared to correct these deficiencies.

## V. CONCLUSION

There is substantial evidence supporting a fair argument that the Project may result in potentially significant adverse impacts that were not identified in the MND, and thus have not been adequately analyzed or mitigated. The City also lacks substantial evidence to support many of the MND’s significance conclusions, in violation of CEQA.

We urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing a legally adequate EIR to address the potentially significant impacts described in this comment letter and the attached letter from James Clark Ph.D. This is the only way the City and the public will be able to ensure that the Project’s significant environmental impacts are mitigated to less than significant levels.

Thank you for your consideration of these comments.

Sincerely,



Kelilah D. Federman

Attachment

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<sup>85</sup> LAMC § 17.15(B)(1)(a).  
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