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Agenda Item No. 7
Agenda Item No. 8

October 26, 2021

VIA ONLINE SUBMISSION
City Planning Commission
City of Los Angeles Planning Department
Email: cpc@lacity.org

VIA EMAIL
Jivar Afshar, Planner (jivar.afshar@lacity.org)

Re: Agenda Item No. 7: Appeal of Advisory Agency Certification, 676 Mateo Street (VTT-74550;SCH No. 2018021068;ENV-2016-3691-EIR)
Agenda Item No. 8: Approval of Remaining Entitlements Case No. CPC-2016-3689-GPA-ZC-HD-MCUP-DB-SPR)

Dear Commissioners, Ms. Afshar:

On behalf of the Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA"), we submit these comments in support of our appeal of the Advisory Agency's approval of the Vesting Tentative Tract Map ("VTTM") and certification of the Final Environmental Impact Report ("EIR") for the 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV 2016-3691-EIR; CPC-2016-3689-GPA-ZC-HD-MCUP-DB-SPR; VTT-74550) ("Project"), proposed by District Centre, LP, & District Centre-GPA, LP (collectively, "Applicant") (Agenda Item 7), as well as on the City Planning Commission's ("Commission") proposed approval of the Project's remaining entitlements (Agenda Item 8).

On September 16, 2021, the Advisory Agency issued a Letter of Determination ("LOD") stating that it had certified and adopted the EIR and approved the VTTM for the Project. The LOD states that the Advisory Agency certified the EIR pursuant to CEQA, despite the fact that the Commission had not yet considered or approved the Project's remaining entitlements. This represented a premature and improper bifurcation of the Project's environmental review process. Furthermore, the EIR fails to comply with CEQA.

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.

For the reasons set forth below, in our prior comments, and in those of air quality expert James Clark, Ph.D. (Exhibit A), and acoustics expert Neil A. Shaw, FASA, FAES (Exhibit B), we urge the Commission to uphold our appeal and vacate the Advisory Agency's certification and adoption of the EIR and approval of the Vesting Tentative Tract Map.[1] We also urge the Commission to deny the Project's remaining entitlements and postpone certification of the EIR until it can be corrected and recirculated.

I. THE ADVISORY AGENCY'S EIR CERTIFICATION WAS PREMATURE

The City, in response to the assertion that it cannot certify the EIR prior to consideration and approval of all Project entitlements, stated,

> The Advisory Agency, as a decision making body of the City, is authorized by the Los Angeles Municipal Code (LAMC) to approve subdivision maps (LAMC 17.03 A). As such, the Advisory Agency is required to certify the EIR before approving the Project's subdivision map, per CEQA Guidelines Section 15090. The EIR fully disclosed and analyzed the whole of the action, and identified the subdivision requests, as well as the General Plan Amendment, Vesting Zone and Height District change, and other associated entitlement requests.[2]

This statement confuses the EIR's description of the entitlements with the City's approval of the entitlements. An EIR may not be certified until *all* entitlements have been heard and considered by a decision-making body of the City.[3] Until that time, the underlying project description remains uncertain and subject to modification. In order to certify an EIR, CEQA requires that the lead agency determine whether the EIR fully and accurately describes a specific development project that is "proposed to be carried out or approved by

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[1] We reserve the right to submit additional comments and evidence at any subsequent hearings and proceedings related to the Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; *see Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.
[2] VTT 74550 Appeal Staff Report, p. A-3.
[3] 14 CCR § 15090(a)(2).

[the agency],"[4] then make a mandatory finding that the EIR has been "completed in compliance with CEQA."[5] The Advisory Agency was not in a position to make either of those determinations when it approved the VTTM and "certified" the EIR in August because the Project's future, scope, and the extent of its environmental impacts remain uncertain until the Commission acts on the remaining entitlements at this hearing.

The fact that the City's municipal code provides a bifurcated approval process for entitlements does not authorize different decisionmakers to conduct piecemealed certification of the same EIR on multiple occasions. It is well-settled that notice of EIR certification cannot be issued before a project has been approved.[6] This is consistent with the requirement to consider the "whole of an action,"[7] including all reasonably foreseeable phases.[8]

Courts have held that environmental review and approval of a project cannot be separated in a bifurcation of proceedings. "A decision on both matters must be made by the same decisionmaking body because '...CEQA is violated when the authority to approve or disapprove the project is separated from the responsibility to complete the environmental review.'"[9] As the court explained in *Clews Land & Livestock, LLC v. City of San Diego,* "for an environmental review document to serve CEQA's basic purpose of informing governmental decision makers about environmental issues, that document must be reviewed and considered by the *same person or group of persons* who make the decision to approve or disapprove the project at issue."[10] In *California Clean Energy Committee v. City of San Jose*, the court held that a bifurcated proceeding, in which an EIR was certified prior to the decision-making body considering the adequacy of a project's environmental review was a violation of CEQA's mandate to provide the fullest possible protection to the environment.[11] The court clarified that bifurcation was improper because it could "produce a situation in which the city council could be bound by a finding that it finds flawed—that the final EIR is complete and in compliance with CEQA."[12]

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[4] PRC § 21080(a).
[5] 14 CCR § 15090(a)(1).
[6] See, e.g., *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 963; *Coalition for an Equitable Westlake/Macarthur Park v. City of Los Angeles* (2020) 47 Cal.App.5th 368, 379; *Stockton Citizens for Sensible Planning v. City of Stockton*, 48 Cal. 4th 481, 489; *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 418-25.
[7] 14 CCR § 15378; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.
[8] *Id.*
[9] *Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340, 360, citing *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 731.
[10] (2017) 19 Cal.App.5th 161, 188.
[11] *California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325, 1341.
[12] *Id.*

CEQA Guidelines section 15090 requires that prior to approval of a project, the lead agency must certify that (1) the final EIR is compliant with CEQA, (2) the final EIR was presented to the decisionmaking body of the lead agency and the decisionmaking body reviewed and considered the information in the final EIR prior to approving the project, and (3) the final EIR reflects the lead agency's independent judgment and analysis.[13] The Advisory Agency's August 25, 2021 EIR certification was therefore premature because the majority of the Project's entitlements had not been considered by the Commission and will not be considered until October 28, 2021. The City is engaging in improper bifurcation of its duties under CEQA. The Advisory Agency's certification of the EIR must be vacated.

II. THE EIR FAILS TO COMPLY WITH CEQA

A. Air Quality

The City continues to repeat its claim that, in accordance with SCAQMD's methodology for determining cumulative impacts to air quality, a project that does not individually exceed SCAQMD thresholds of significance for emissions will not contribute to cumulatively considerable impacts from emissions. In its response to our appeal, the City asserts that we have provided "no evidence that the combined emissions from three related projects would have any significant cumulative effect on regional air quality. Rather the Appellant incorrectly asserts that there is a significant cumulative impact on regional air quality without substantial evidence."[14] This approach has been rejected by the Courts, and fails to comply with CEQA's requirement that a project mitigate impacts that are "cumulatively considerable."[15] "Proper cumulative impact analysis is vital 'because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.'"[16]

In *Friends of Oroville,* the City of Oroville prepared an EIR for a retail center. The EIR failed to analyze the project's cumulative contribution to GHG impacts by concluding, without analysis, that the project's "miniscule" GHG emissions were insignificant in light of the state's cumulative, state-wide GHG emissions. The EIR concluded that further analysis of the project's GHG impacts would result in "applying a meaningless, relative number to determine an insignificant impact."[17] The court of appeal rejected this approach as an

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[13] CEQA Guidelines, § 15090, subd. (a).
[14] Staff Report, p. A-4.
[15] PRC § 21083(b)(2); 14 CCR § 15130; *Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 721.
[16] *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.
[17] 219 Cal. App. 4th at 841-42.

outright dismissal of the City's obligation to analyze the project's cumulative GHG impacts.[18]

Similarly, in *Kings County Farm Bureau v. City of Hanford,*[19] the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for PM10 and ozone, the City failed to incorporate mitigations for the project's cumulative air quality impacts from project emissions because it concluded that the Project would contribute "less than one percent of area emissions for all criteria pollutants."[20] The city reasoned that, because the project's air emissions were small in ratio to existing air quality problems, that this necessarily rendered the project's "incremental contribution" minimal under CEQA. The court rejected this approach, finding it "contrary to the intent of CEQA."

The City made the same mistake here, assuming that because Project emissions will not exceed SCAQMD thresholds, the impacts will not be cumulatively considerable. Applying this definition of "cumulative" would produce an absurd result: cumulatively considerable impacts would never be generated, no matter how many projects were considered together, as long as they all had individually insignificant impacts. This lack of analysis is precisely what the courts have rejected as inconsistent with the concept that "environmental damage often occurs incrementally from a variety of small sources."[21] The City must prepare a revised DEIR to analyze and mitigate the Project's cumulative impacts.

B. Noise

We previously commented that, in rerouting the haul truck route to Imperial Street and Santa Fe Avenue, the EIR had not disclosed or mitigated the noise impacts the new haul route would have on the residents along those streets. In response, the City stated that new calculations of noise impacts were made by consultant Eco Tierra on September 13, 2021 to confirm that impacts to those residents would not be significant.[22] The calculations showed that, "at a distance of 37.22 feet, the instantaneous noise level generated by a haul truck passing by the Amp Lofts would be a maximum of 78.56 dBA."[23] The measured maximum ambient noise at the Amp Lofts, according to the Draft EIR, is 86.7 dBA.[24] The City concluded that the haul truck noise impacts, therefore, "would not exceed the ambient maximum noise level already experienced at the Amp Lofts location."[25]

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[18] *Id*.
[19] (1990) 221 Cal. App. 3d 692, 721.
[20] *Id*. at 719.
[21] *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.
[22] VTT 74550 Appeal Staff Report, p. A-8.
[23] *Id*., p. A-9.
[24] DEIR, IV.H Noise, p. IV.H-17.
[25] Appeal Staff Report, p. A-9.

Closer inspection, however, reveals that the City relied on baseline conditions that are not representative of normal ambient noise in the Project vicinity. The ambient maximum noise levels at the Amp Lofts were measured in July 2017—during construction of the Amp Lofts, which lasted from early 2017 until 2020.[26] During that period, noise levels were elevated as haul trucks were in operation. The relative increase in ambient noise levels from Project construction was therefore assumed to be smaller than they would be when compared to normal baseline conditions that did not have ongoing construction as a baseline.

The City's assumption that the Project's noise impacts to residents of the Amp Lofts are "already experienced at the Amp Lofts location" is similarly unsupported because the residents of Amp Lofts did not yet occupy the building when the baseline noise measurements were taken. Noise impacts from the Project's new haul route will represent a significant increase in existing noise levels to these residents. This impact was not disclosed or mitigated in the EIR. Furthermore, the change in haul routes constitutes a significant revision to the Draft EIR which requires recirculation as required by CEQA Guidelines section 15088.5. The City claims that "since noise generated by haul trucks would be lower than the ambient noise conditions on each of these streets … the revised haul route would not represent a new significant environmental impact, and would not constitute significant new information requiring recirculation of the EIR."[27] This conclusion is unsupported due to the City's reliance on erroneous baseline measurements.

C. Health Risk

The City continues to assert that it is not required to analyze the human health effects of the Project's direct or indirect emissions on local sensitive receptors or future Project residents, and that it has followed the guidance of SCAQMD in determining that a health risk analysis is not required. The City's position is contrary to law. An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[28] These standards apply to an EIR's analysis of public health impacts of a project.

In *Sierra Club v. County of Fresno*, the Supreme Court affirmed CEQA's mandate to protect public health and safety by holding that an EIR fails as an informational document when it fails to disclose the public health impacts from air pollutants that would be generated by a development project.[29] The Court held that the EIR for a 942-acre mixed-use development was deficient as a matter of law because it lacked an informational discussion of air quality impacts as they connect to adverse human health effects.[30] As the Court

[26] See, e.g., https://urbanize.city/la/post/arts-districts-amp-lofts-heads-towards-finish-line.
[27] Appeal Staff Report, p. A-9.
[28] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732.
[29] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518–522.
[30] *Id.* at 507–508, 518–522.

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."[31] The EIR failed to comply with CEQA because the public, after reading the EIR, "would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin."[32] CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.[33]

The City's claim that a health risk analysis is not required also runs counter to recent guidance provided by SCAQMD, as pointed out by Dr. Clark. In that recent guidance, SCAQMD stated: "If the Proposed Project generates diesel emissions from long-term construction or attracts diesel-fueled vehicular trips, especially heavy-duty diesel-fueled vehicles, it is recommended that the Lead Agency perform a mobile source health risk assessment."[34] Here, the City acknowledges that the Project will result in diesel emissions.[35] Therefore, a health risk analysis must be prepared.

III. CONCLUSION

CREED LA respectfully requests that the Commission uphold its appeal, vacate the Advisory Agency's certification and adoption of the EIR and approval of the Vesting Tentative Tract Map, and prepare and circulate a legally revised Draft EIR. If a Statement of Overriding Considerations is adopted for the Project, we urge the City to consider whether the Project will result in employment opportunities for highly trained workers.

Sincerely,

Kendra Hartmann

KDH:acp

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[31] *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

[32] *Id.* at 518. CEQA's statutory scheme and legislative intent also include an express mandate that agencies analyze human health impacts and determine whether the "***environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly***." (Public Resources Code § 21083(b)(3) (emphasis added).) Moreover, CEQA directs agencies to "take immediate steps to identify any critical thresholds for the ***health and safety of the people*** of the state and take all coordinated actions necessary to prevent such thresholds being reached." (Public Resources Code § 21000(d) (emphasis added).)

[33] *Sierra Club*, 6 Cal.5th at 518–522.

[34] Site Plan Consultation for the MA21269. Letter from Lijin Sun, SCAQMD Program Supervisor CEQA IGR to Rocio Lopez, Senior Planner, City of Jurupa Valley, Planning Department. 10/19/2021.

[35] Clark Comments, p. 2.