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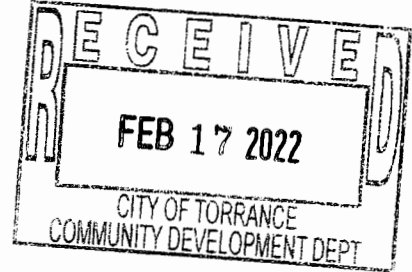
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February 14, 2022



Via Email and Overnight Mail

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**Re: Comments on the Initial Study/Mitigated Negative Declaration
for the Torrance Gateway Phase III (CUP21-00022, DIV21-00010,
EAS21-00002) (SCH Number 2022010161)**

Dear Mr. Martinez:

We are writing on behalf of **Coalition for Responsible Equitable Economic
Development Los Angeles ("CREED LA")** to provide comments on the Initial
Study/Mitigated Negative Declaration ("IS/MND") prepared by the City of Torrance
("the City") for the Torrance Gateway Phase III (CUP21-00022, DIV21-00010,
EAS21-00002) (SCH Number 2022010161) ("Project"), proposed by T.I. Commerce
Center, LLC/Sares Regis Group/SRG Commercial ("Applicant").¹

¹ The three entities have the address of 3501 Jamboree Road, Suite 3000 Newport Beach, CA 92660.
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The Project proposes to demolish existing business park buildings, and construct five light industrial buildings totaling 730,000 square feet. The five buildings would be concrete tilt-up construction and measure up to 53 feet high. Building 8 would be 138,813 square feet, Building 9 would be 148,295 square feet, Building 10 would be 148,638 square feet, Building 11 would be 159,132 square feet, and Building 12 would be 135,122 square feet. There would be 1,211 parking spaces included. The Project site is located on 39 acres, bounded by 190th St., Western Ave., 195th St., and Gramercy Place, in the City of Torrance, Los Angeles County (Assessor's Parcel Numbers 7352-016-040, 7352-016-042, 7352-016-044). The Project is one phase in a broader effort to redevelop a large office park previously used as headquarters by Toyota, referred to in the IS/MND as the Toyota Campus Business Park.² The Project is preceded by two earlier phases of redevelopment on adjacent sites.

The Project's other discretionary approvals include approval of a Conditional Use Permit ("CUP"), Division of Lot for mapping, and approval of a Tentative Parcel Map.

We reviewed the IS/MND with the assistance of air quality and hazardous resources expert James J. Clark, Ph.D.,³ and transportation and traffic expert Daniel T. Smith.⁴ The City must separately respond to their technical comments.

Based upon our review of the IS/MND and supporting documentation, we conclude that the IS/MND fails to comply with the requirements of CEQA. The IS/MND fails to provide an accurate project description and environmental baseline upon which to measure the Project's reasonably foreseeable impacts. The project description piecemeals and omits major components of the Project – namely, the other phases of development. And the environmental baseline incorrectly assumes that the existing facilities on the Project site are still operating, despite being vacant for years. The consequences of these defects are far-reaching and require a complete revision of the IS/MND's analyses.

As a result of its shortcomings, the IS/MND lacks substantial evidence to support its conclusions and fails to properly mitigate the Project's potentially significant individual and cumulative impacts. These include impacts to public

² IS/MND, p. 1-1.

³ Dr. Clark's technical comments and curricula vitae are attached hereto as Exhibit A.

⁴ Mr. Smith's technical comments and curricula vitae are attached hereto as Exhibit B.
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health from disturbance of hazardous chemicals on the Project site and from toxic diesel particulate matter (“DPM”) emissions. Instead, substantial evidence supports a fair argument that the Project will result in significant and unmitigated impacts in these areas. The City cannot approve the Project until the errors in the IS/MND are remedied and substantial evidence supporting its conclusions is provided in an environmental impact report (“EIR”).

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 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 Torrance.

Individual members of CREED LA and its member organizations include Francisco Garcia, Patrick Kelley, Isaac Reynoso, Carlos Valdez, and Daniel Valencia. These individuals live, work, recreate, and raise their families in the City of Torrance 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.

CREED LA seeks to ensure a sustainable construction industry over the long-term by supporting projects that have positive impacts for the community, and which minimize adverse environmental and public health impacts. 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.

II. THE PROJECT WILL BE PREMATURELY CONSIDERED BY THE PLANNING COMMISSION

On February 7, 2022, the City issued a notice stating that the Project will be considered by the City of Torrance Planning Commission on February 16, 2022. The hearing will consider adoption of the MND, and approval of a CUP to allow construction of five light industrial buildings, in conjunction with a Division of Lot to allow a subdivision into five parcels. This hearing will be conducted merely two days after the close of the IS/MND public comment period on February 14, 2022. A Community Development Department Staff Report on the Project was also released prior to the close of the public comment period recommending approval of the Project. This recommendation and the February 16 hearing are premature.

CEQA's "purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the [CEQA document] protects not only the environment, but also informed self-government."⁵ Here, the City's actions suggest that the City is planning on recommending approval of the Project without considering or responding to all public comments received during the mandatory CEQA comment period on the IS/MND.

CEQA requires the lead agency to receive, consider, and meaningfully respond to public comments on the MND.⁶ The purpose of the public comment period is to foster public participation.⁷ Public comments require the lead agency to consider additional mitigation measures, alternatives, and impact analysis recommended by commenters. Responses to comments may result in changes to the Project, additional analysis, or the adoption of new alternatives and mitigation measures that were not presented in the MND.⁸ The City may also be required to prepare an EIR for the Project.

Holding a planning commission meeting to make legally required recommendations regarding Project approval before the City has considered and prepared responses to comments on the IS/MND (or an EIR) would be a violation of CEQA. To begin with, the hearing will be held too soon after the close of the public

⁵ *Citizens of Goleta Valley v. Bd. of Supervisors* ("Goletta Valley") (1990) 52 Cal.3d 553, 564, internal citations omitted.

⁶ 14 Cal. Code Regs. § 15074(b).

⁷ 14 Cal. Code Regs. § 15201.

⁸ 14 Cal. Code Regs. § 15074(b), (c), (d); 6012-004acp

comment period for the City to consider or respond to comments, as required by CEQA. These comments, for instance, identify numerous flaws throughout the IS/MND that will require time and additional environmental analysis to remedy. This analysis cannot be completed in two days. The Staff Report recommendation is similarly premature. The Staff Report states that “[d]uring the review and comment period, affected public agencies and any interested parties were able to comment on the adequacy of the Initial Study in identifying and analyzing the potential environmental impacts of the Torrance Gateway Project and the ways in which potentially significant effects can be avoided or mitigated.” Yet, the Staff Report recommends approval of the Project without considering all public comments, including CREED LA’s comments.

The City must withdraw the premature recommendation and Staff Report, and reschedule the Planning Commission hearing to a later date after the City has responded to comments on the IS/MND. This would allow for meaningful participation by the public and the detailed consideration of the Project’s environmental impacts that CEQA requires.

III. THE PROJECT DESCRIPTION IS INADEQUATE

The IS/MND does not meet CEQA’s requirements because it fails to include an accurate and complete Project description, rendering the entire analysis inadequate. California courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”⁹ CEQA requires that a project be described with enough particularity that its impacts can be assessed.¹⁰ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project’s impacts and undermining meaningful public review.¹¹ Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.¹²

⁹ *Stoepthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* (“*CBE v. Richmond*”) (2010) 184 Cal.App.4th 70, 85–89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.

¹⁰ 14 CCR § 15071; see *Laurel Heights Improvement Assn. v. Regents of University of California* (“*Laurel Heights I*”) (1988) 47 Cal.3d 376, 192-193.

¹¹ *Id.*

¹² *Sundstrom v. County of Mendocino* (“*Sundstrom*”) (1988) 202 Cal.App.3d 296, 311.

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.”¹³ “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.”¹⁴ Courts have explained that a complete description of a project 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.”¹⁵ “If a [CEQA document]...does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decision-making cannot occur under CEQA and the final [document] is inadequate as a matter of law.”¹⁶

A. The Project Is Improperly Piecemealed

The IS/MND labels the Project the “Torrance Gateway (*Phase III*) Project,” but fails to disclose any information regarding previous or future phases of development. Information available elsewhere demonstrates that these other phases are Project components that should have been included in the IS/MND’s project description.

a. Other Known Components of the Project

The Project is one phase of redevelopment of the Toyota Campus Business Park — about 2 million square feet of office and industrial space on 110 acres spread across 16 parcels. The parcels included in the campus are identified in the below figure.¹⁷

¹³ CEQA Guidelines § 15378.

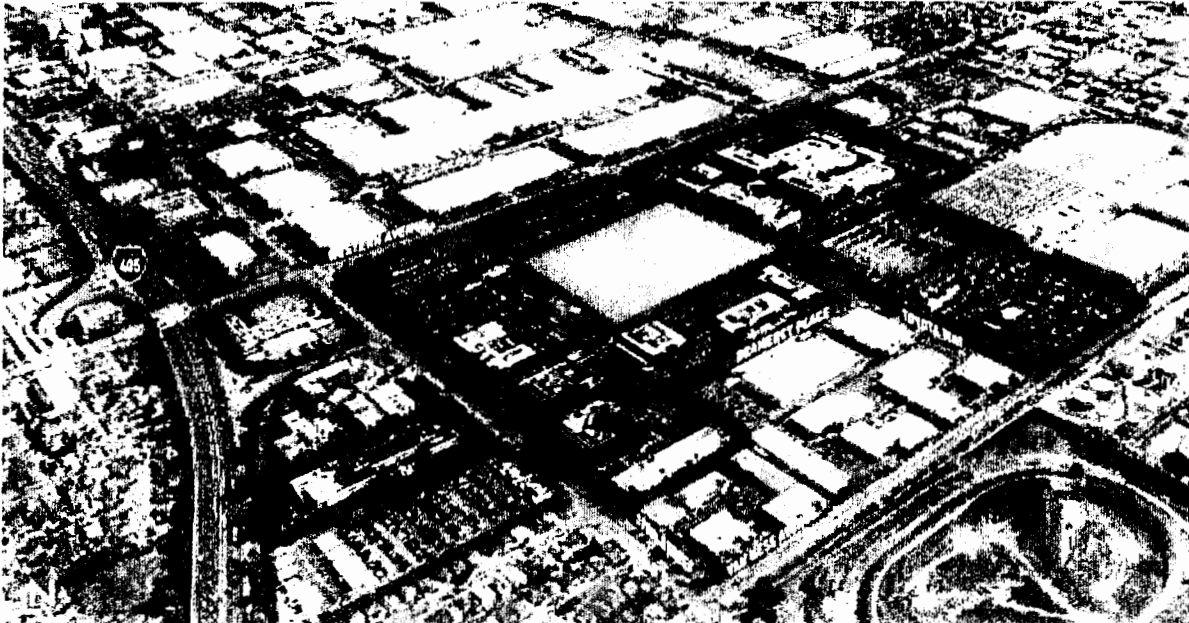
¹⁴ *Id.*, § 15378(c).

¹⁵ *Laurel Heights I*, 47 Cal. 3d 376, 398 (emphasis added); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

¹⁶ *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

¹⁷ Daily Breeze, Hello Google and Tesla? Toyota properties in Torrance and Los Angeles finally up for sale (February 15, 2017), <https://www.dailybreeze.com/2017/02/15/hello-google-and-tesla-toyota-properties-in-torrance-and-los-angeles-finally-up-for-sale/>. Note: the grey building in the middle of the campus, APN 7352-016-041, is still owned by Toyota.

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On November 15, 2000, the Planning Commission of the City of Torrance conducted a public hearing to consider an application filed by Toyota Motor Sales, Inc. to allow the development of the Toyota South Campus, which involved construction of 992,000 square feet of various light industrial, service, and business park uses on property located in the M-2 Zone south of 195th Street (“Toyota Way”) between Van Ness Avenue and Western Avenue (aka the “Original Project”).¹⁸ An Initial Study (EAS00-00008) was prepared to assess the potential environmental impacts associated with Original Project. The Planning Commission adopted a Mitigated Negative Declaration (“2000 MND”)¹⁹ and subsequently approved CUP00-00031 to allow development of the Original Project in two phases (Phase I and II). The Original Project was partially implemented, with Phase I completed in 2002 with construction of a service garage, a customer service center, and a financial center totaling 634,040 square feet in floor area built. Phase II, which had proposed 351,360 square feet of general office use, was not constructed.

¹⁸ City of Torrance, Planning Commission Resolution No. 20-050 (2020), available at <https://www.torranceca.gov/home/showpublisheddocument/61594/637356723926970000>.

¹⁹ State Clearinghouse No. 2000101085.
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In October 2017, the Applicant purchased the 110-acre office campus from Toyota, consisting of 16 separate parcels.²⁰ These parcels included those in the Original Project. The Applicant subsequently undertook development of the Toyota Campus Business Park. The Applicant's approach was to treat the redevelopment of the campus as modifications of the aforementioned phases.

On April 4, 2018, the Planning Commission of the City of Torrance conducted public hearing to consider an application filed by the Applicant with a request for approval to modify Phase II of the Original Project by converting 351,360 square feet of general office use to 410,000 square feet of light industrial use, and approval of a Modification (MOD18-00003) of the previously approved CUP00-00031 to allow a conversion in floor area from general office use to light industrial use, in conjunction with a Conditional Use Permit (CUP19-00005) to allow three new light industrial buildings, and a Division of Lot (DIV18- 00004) to allow a subdivision of two parcels into three parcels, on property located in the M-2 Zone at 2200 195111 Street (APN: 7352-003-076, 7352-003-077), referred to as the "2018 Modified Project." An Addendum ("2018 Addendum") to the 2000 MND was prepared for the 2018 Modified Project. The Planning Commission adopted the 2018 Addendum and subsequently approved the 2018 Modified Project.

On October 16, 2019, the Planning Commission conducted a public hearing to consider an application filed by the Applicant with a request for approval to modify Phase I of the Original Project by converting the existing 634,040 square feet in floor area of general office use to 760,072 square feet of light industrial use, and approval of a Modification of the previously approved CUP00-00031 to allow a conversion in floor area from general office use to light industrial use, in conjunction with a Conditional Use Permit to allow three new light industrial buildings, and a Division of Lot to allow a subdivision into three parcels, on property located in the M-2 Zone located southwest of 195th Street and Western Avenue at 1850 195th Street and 19801 Western Avenue (APN Nos. 7352-003-082, 7352-003-078), referred to as the "2019 Modified Project." An Addendum to the 2000 MND was prepared for the 2019 Modified Project. The Planning Commission adopted the 2019 Addendum and subsequently approved the 2019 Modified Project.

²⁰ Daily Breeze, It's official: Sale of Toyota's Torrance campus goes to Irvine real estate developer (October 18, 2017) <https://www.dailybreeze.com/2017/10/18/its-official-sale-of-toyotas-torrance-site-goes-to-irvine-real-estate-developer/>; Sares-Regis.com, Sares Regis Group Secures First Leases for Phase I of Torrance Commerce Center, <https://www.sares-regis.com/post/sares-regis-group-secures-first-leases-for-phase-i-of-torrance-commerce-center> (last visited 2/14/2022).

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The 2019 Modified Project was further modified. In 2020, the Community Development Director approved a Minor Modification (ADM20-01003) of the previously approved 2019 Modified Project, referred to as the 2020 Modified Project.²¹ The 2020 Modified Project involved site reconfiguration from three new light industrial buildings to four new light industrial buildings.

b. Applicant's Public Statements Regarding the Project

The Applicant also bought and is redeveloping the former campus of Boeing and Douglas Aircraft in Long Beach into Douglas Park, a 238-acre business park.²² The Daily Breeze, a local periodical, quotes the president of Sares-Regis' commercial development division as stating that Sares-Regis plans to redevelop the Toyota campus using the same approach it employed at the former Douglas-Boeing site.²³ The president of Sares-Regis also stated, "[w]e do build residential, but we have no plans to do residential there given the location next to the refinery."²⁴ On the Applicant's website, the redevelopment of the entire Toyota campus is referred to as a single endeavor – the "Torrance Commerce Center development."²⁵

c. Caselaw Provides that the Project is Piecemealed

CEQA defines a "project" as "the whole of an action" that may result in either a direct physical environmental change or a reasonably foreseeable indirect

²¹ C.D.D. Recommendations, Agenda Item No. 120, Case No. MOD20-01003 (9/16/2020), available at <https://www.torranceca.gov/home/showpublisheddocument/61594/637356723926970000>.

²² Daily Breeze, Toyota campus sale pending, Torrance mayor announces in annual address, (September 22, 2017) <https://www.dailybreeze.com/2017/09/22/toyota-campus-sale-pending-torrance-mayor-announces-in-annual-address/>; Los Angeles Times, Toyota headquarters in Torrance sold for \$270 million to Irvine real estate developer (October 19, 2017) <https://www.latimes.com/business/la-fi-tovota-sares-regis-20171019-story.html> (last accessed 2/13/2022).

²³ Daily Breeze, It's official: Sale of Toyota's Torrance campus goes to Irvine real estate developer (October 18, 2017) <https://www.dailybreeze.com/2017/10/18/its-official-sale-of-toyotas-torrance-site-goes-to-irvine-real-estate-developer/>.

²⁴ Daily Breeze, It's official: Sale of Toyota's Torrance campus goes to Irvine real estate developer (October 18, 2017) <https://www.dailybreeze.com/2017/10/18/its-official-sale-of-toyotas-torrance-site-goes-to-irvine-real-estate-developer/>.

²⁵ Sares-Regis.com, Sares Regis Group Secures First Leases for Phase I of Torrance Commerce Center, <https://www.sares-regis.com/post/sares-regis-group-secures-first-leases-for-phase-i-of-torrance-commerce-center>; Sares-Regis.com, Torrance Commerce Center Phase II Begins Construction, <https://www.sares-regis.com/post/torrance-commerce-center-phase-ii-begins-construction> (last visited 2/14/2022).

change.²⁶ CEQA prohibits a project proponent from seeking approval a large project in a piecemeal fashion in order to take advantage of environmental exemptions or lesser CEQA for smaller projects.²⁷ CEQA mandates “that environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences.”²⁸ Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project and a public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. “The CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish.”²⁹

In *Banning Ranch Conservancy v. City of Newport Beach*,³⁰ the Court of Appeal synthesized caselaw on piecemealing into several categories:

First, “there may be improper piecemealing when the purpose of the reviewed project is to be the first step toward future development.”³¹

Second, “there may be improper piecemealing when the reviewed project legally compels or practically presumes completion of another action.”³²

Third, “[o]n the other hand, two projects may properly undergo separate environmental review (i.e., no piecemealing) when the projects have different proponents, serve different purposes, or can be implemented independently.”³³ Qualifying this third test, the Court cited *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora*,³⁴ which held that “the possibility that two acts could be taken independently of each other is not as important as whether they actually will be implemented independently of each other.” To this end, the Court of Appeal

²⁶ 14 Cal. Code Regs. Sec. 15378.

²⁷ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal. App. 4th at 1340.

²⁸ *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165.

²⁹ *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268.

³⁰ (“Banning Ranch”), 211 Cal.App.4th 1209.

³¹ *Id.* at 1223.

³² *Id.*

³³ *Id.* at 1224.

³⁴ (“*Tuolumne County*”) (2007) 155 Cal.App.4th 1214.

in *Tuolumne County* considered whether activities constituted “a single, coordinated endeavor undertaken by the [applicant].”³⁵ For example, the court in *Association for a Cleaner Environment v. Yosemite Community College District*³⁶ addressed “what actions should be considered as part of the potential [CEQA] project” in a case involving the closure of a community college's shooting range.³⁷ The court determined that the closure and removal of the shooting range, the cleanup activity, and the transfer of the operations previously conducted there to other facilities were all part of a single, coordinated endeavor undertaken by the community college.³⁸ As a result, the court concluded that those acts were part of “the whole of an action” by the community college for purposes of Guidelines section 15378.³⁹

The court in *Tuolumne County* provided guidance on how to ascertain whether activities constituted “a single, coordinated endeavor”: examine whether the activities are “related in (1) time, (2) physical location and (3) the entity undertaking the action.”⁴⁰ “When two acts are closely connected in time and location, the potential for related physical changes to the environment in that location is greater than otherwise... Thus, the need for a single review of the environmental impact of the two acts is greater. Also, when the same entity undertakes both matters, it increases the likelihood that the matters are related — that is, are part of a larger whole.”⁴¹

Here, the IS/MND does not provide sufficient information to determine whether the first two piecemealing tests are met. Without basic information about the other phases of development of the Torrance Commercial Center, it is unclear whether “the purpose of the reviewed project is to be the first step toward future development,” or “the reviewed project legally compels or practically presumes completion of another action.” However, this evidence is provided in other publicly available documents described above.

There is also substantial evidence demonstrating that the third test for piecemealing in violation of CEQA is met. The proponent for all phases of development of the Project is the same: T.I. Commerce Center, LLC/Sares Regis

³⁵ *Id.* at 1224.

³⁶ (2004) 116 Cal.App.4th 629.

³⁷ *Id.* at 638.

³⁸ *Id.* at 639.

³⁹ *Id.* at 638-639.

⁴⁰ *Tuolumne County*, 155 Cal.App.4th at 1227.

⁴¹ *Id.*

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Group/SRG Commercial, located at 3501 Jamboree Road, Suite 3000 Newport Beach, CA 92660. The Applicant purchased all the parcels from the same seller at the same time and is now redeveloping them. All phases involve converting existing, vacant office facilities into light industrial facilities. These facilities are adjacent to each other. The facilities are being redeveloped successively, starting soon after the purchase of the Toyota Campus in 2017. There is evidence through the Applicant's public communications that these activities are intended to redevelop the entire Toyota Campus into a single entity – the "Torrance Commercial Center." Overall, because these activities are closely "related in (1) time, (2) physical location and (3) the entity undertaking the action," these activities constitute "a single, coordinated endeavor."⁴² Accordingly, the potential for related changes to the environment is high.

The facts of this case are similar to *Arviv Enterprises, Inc. v. South Valley Area Planning Commission*,⁴³ in which a developer was required to obtain an EIR for a 21-house development for which he had obtained a series of discrete approvals over a short period of time. In a series of permit applications, and overlapping reviews over a short period of time, the developer managed to secure (1) a series of permits to build five houses downslope from Mulholland Drive; (2) a categorical environmental exemption to build two additional houses across the street; (3) a mitigated negative declaration to build 14 additional houses on an adjacent street; and (4) a variance for one of the five houses built over height. Prompted by nearby residents' and homeowner associations' complaints, the City of Los Angeles came to realize the cumulative effects from what was in reality a development project for 21 hillside houses required an environmental review of the project as a whole. It thus imposed a building hiatus for six months, or until an EIR was completed and certified. The developer sought an administrative writ of mandate to challenge the City's requirement for an EIR covering all 21 proposed houses which included those already constructed, although the specific appeal then before the commission technically concerned only two of the proposed houses. The trial court denied the developer's request for relief. The Court of Appeal affirmed.

This Project is similar because the Applicant obtained a series of discrete approvals over a short period of time for what is actually a single development project. Just as the individual houses in *Arviv* might were processed with separate project approves yet require review in a single EIR, the various phases of

⁴² *Tuolumne County*, 155 Cal.App.4th at 1227.

⁴³ ("*Arviv*") (2002) 101 Cal. App. 4th 1336.

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development of the Torrance Commercial Center are being applied for separately, yet require review in a single EIR as a single project pursuant to CEQA.

Because the IS/MND's project description fails to include all phases of the Torrance Commercial Center redevelopment, the IS/MND violates CEQA's requirement to analyze "the whole of an action." This failure is compounded by the fact that the IS/MND also fails to analyze the entire Project's impacts in a cumulative impacts analysis.

d. The City Must Prepare an EIR that Includes Previous and Future Phases of the Project

In *Arviv*, the developer contended that he had a vested right to proceed with his development without having to complete an EIR based on permits already issued, and environmental clearances already obtained.⁴⁴ But the court disagreed:

Arviv has not demonstrated requiring an EIR in any way impinges on any claimed vested right. The City has not issued Arviv a building permit for the 14-house project on Leicester Drive. Arviv also has not secured a building permit for the two additional houses on Woodstock Road. There is no argument to the contrary. The City did issue Arviv building permits for the five initial houses on Woodstock Road. However, it did not do so in accordance with then existing applicable law. Both CEQA and the Mulholland Scenic Parkway Specific Plan existed at the time Arviv acquired permits to build the initial five houses. Compliance with these existing laws was thus required notwithstanding the City's failures and/or Arviv's misleading project descriptions which may have prevented the City from appreciating the full scope of the proposed development.⁴⁵

Similarly, the City must prepare an EIR including preceding phases of the Torrance Commerce Center redevelopment for which permits were already issued, and environmental clearances already obtained.

⁴⁴ *Arviv*, 101 Cal. App. 4th at 1348.

⁴⁵ *Id.* at 1350.

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B. The IS/MND Fails to Disclose the Project's End Uses

The project description typically need not identify the end user for a project because CEQA is concerned with the project's environmental impacts, not who uses it.⁴⁶ However, courts have held that where the tenant, or type of business, is known and there is evidence that an impact unique to that tenant or type of business will result, an EIR must disclose that information.⁴⁷

Here, the IS/MND states that the Project will involve 730,000 square feet of light industrial uses (warehouse and manufacturing uses). But the IS/MND fails to provide any further information about the Project's end uses. The IS/MND fails to disclose how much of the Project is anticipated to be allocated for each type of use. This information is critical for assessing the Project's impacts on transportation, traffic, and emissions. For example, if the Project is primarily used for warehousing and distribution, it might have higher transportation impacts than disclosed in the IS/MND. And if the Project is primarily used for manufacturing, it might have higher energy consumption impacts than disclosed.

The IS/MND also fails to disclose what type of warehousing the Project will involve. Different types of warehousing uses (such as distribution centers, cold storage warehouses, sort/non-sort warehouses, automated warehouses) have dramatically different environmental impacts. For instance, a cold storage warehouse generates greater environmental impacts than a high cube warehouse, since cold storage generates more trips per square foot and has higher energy impacts due to the low temperatures required by the facility's refrigerated trucks and on-site storage." A "sort" distribution center has much higher transportation impacts than "non-sort" distribution center because the sorting process requires more onsite employees.

The City seems to have more information regarding the Project's end uses than was disclosed to the public, as the IS/MND states: "based on information provided by the Project Applicant, the Project would not utilize natural gas."⁴⁸ If the City or Applicant has any knowledge as to the Project's end uses, the IS/MND must include that information.

⁴⁶ *Maintain Our Desert Env't v. Town of Apple Valley* (2004) 124 CA4th 430.

⁴⁷ *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 CA4th 1184, 1213.

⁴⁸ IS/MND, Appendix A, pg. 9.

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C. The IS/MND Fails to Discuss Other Phases of Development

The IS/MND labels the Project the “Torrance Gateway (Phase III) Project,” but fails to disclose any information regarding previous phases of development. Specifically, the IS/MND fails to disclose what *types of development* were proposed or approved in previous phases. The IS/MND fails to disclose the *development status* of previous phases of development. The IS/MND fails to disclose *Phase III’s relationship* to previous phases of development. The IS/MND fails to disclose *environmental impacts* of the other phases of development. The IS/MND also fails to disclose whether the Project’s *end users* will be the same as other phases of development. The IS/MND also fails to disclose whether there will be any *future* phases of development.

This missing information is critical for assessing whether the Project has cumulatively significant impacts. For instance, there might be cumulatively significant air quality impacts if construction of multiple phases of the Project are concurrent. And the combined transportation impacts of the phases may be cumulatively significant depending on the uses of the different phases. This information is also necessary for the public to evaluate whether the three phases should be evaluated as a single project.

D. The IS/MND’s Impact Analysis is Unsupported Because the Project Is Not Clearly Defined

“Choosing the precise time for CEQA compliance involves a balancing of competing factors... EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.”⁴⁹

Here, basic features of the Project’s configuration and end uses are undefined, and therefore render the IS/MND’s impact analysis and significance conclusions unsupported. As discussed above, the IS/MND does not provide any information about the Project’s end uses, which could include a wide variety of warehousing and manufacturing uses. The Project’s configuration is similarly undefined, as the five buildings proposed to be constructed are of undefined purpose – the IS/MND states that “[i]ndividual aspects of the Project, including individual

⁴⁹ CEQA Guidelines § 15004 (b).
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building configurations and building sizes may be modified in the future as the Project is further defined.”⁵⁰

E. The IS/MND Fails to Disclose Whether the Project will Require Backup Generators

The IS/MND does not disclose whether the Project will utilize backup/emergency generators or how the Project would handle power outages. Such disclosure is necessary because many of the warehousing and industrial uses that the Project anticipates can require backup generators. For instance, if one of the Project’s warehouses is used for cold storage, it would require backup generators, due to cold storage’s need for a constant energy supply to power refrigeration.⁵¹ Generators may also be required for certain manufacturing uses permitted for the Project. Further, the LA Times reports that the Toyota Campus purchased by the Applicant contains five diesel-powered generators – it is unknown whether any of those generators are located on the Project site.⁵²

A failure to identify backup generators impacts the adequacy of the IS/MND’s environmental analyses. Backup generators commonly rely on fuels such as natural gas or diesel,⁵³ and thus can significantly impact air quality, GHG emissions, and

⁵⁰ IS/MND, pg. 1-1.

⁵¹ California Air Resources Board, Comments re: Notice of Preparation (NOP) for the United States Cold Storage Hesperia Project (Project) Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2020069036 (July 24, 2020), available at <https://ww2.arb.ca.gov/sites/default/files/classic/toxics/ttdceqalist/uscoldstorage.pdf> (stating that the HRA prepared for the Project should account for all potential health risks from Project-related diesel PM emission sources such as backup generators, TRUs, and heavy-duty truck traffic); Kusing Power Generator, <http://ksdieselgenerator.com/2019/backup-generator-for-cold-storage-room.html>, last visited 6/21/2021 (“Backup power supply is necessary for cold storage room to remain functional to avoid deterioration of high value-added goods such as vegetables and food stored in the room after long period of power failure”); East Coast Power Systems, Electrical Power Systems for Warehouses, <https://www.ecpowersystems.com/resources/electrical-power-systems/electrical-power-systems-for-warehouses/> (explaining that some warehouses that deal with refrigeration have to have multiple power backup generators by law).

⁵² Los Angeles Times, Toyota headquarters in Torrance sold for \$270 million to Irvine real estate developer (October 19, 2017) <https://www.latimes.com/business/la-fi-toyota-sares-regis-20171019-story.html> (last accessed 2/13/2022).

⁵³ SCAQMD, Fact Sheet on Emergency Backup Generators, <http://www.aqmd.gov/home/permits/emergency-generators> (“Most of the existing emergency backup generators use diesel as fuel”).

public health through toxic diesel particulate (“DPM”) emissions.⁵⁴ Dr. Clark’s comments explain, in detail, the severity of these emissions.⁵⁵

Overall, due to the significance environmental impacts associated with backup generators, the IS/MND must be revised to disclose any backup generators that may foreseeably be required for the Project.

F. The IS/MND is Inconsistent on Whether the Project Would Use Natural Gas

The IS/MND’s Air Quality, Greenhouse Gas, & Health Risk Assessment states that “based on information provided by the Project Applicant, the Project would not utilize natural gas.”⁵⁶ But the IS/MND fails to substantiate this claim. Substantiation of this claim is necessary to resolve an internal inconsistency in the IS/MND, as the Air Quality, Greenhouse Gas, & Health Risk Assessment elsewhere estimates that the Project would use 6,606,500 kBTU/year of natural gas. The basis for this estimate is also not made clear in the IS/MND. The IS/MND also states that “[n]atural gas service would be provided by the Southern California Gas.”⁵⁷

Because the IS/MND fails to provide a consistent picture of the Project’s natural gas consumption, it fails to provide an “accurate, stable and finite project description [which] is the *sine qua non* of an informative and legally sufficient

⁵⁴ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps> (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at <https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff> (“When electric utilities de-energize their electric lines, the demand for back-up power increases. This demand for reliable back-up power has health impacts of its own. Of particular concern are health effects related to emissions from diesel back-up engines. 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. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California’s 35 air pollution control and air quality management districts (air districts)”).

⁵⁵ Clark, pg. 7-8.

⁵⁶ IS/MND, Appendix A, pg. 9.

⁵⁷ IS/MND, pg. 2-13.

EIR.”⁵⁸ Further, the IS/MND’s failure to substantiate the Project’s estimated natural gas use is a failure to describe the Project with enough particularity that its impacts can be assessed.⁵⁹

IV. THE IS/MND FAILS TO ADEQUATELY ESTABLISH THE EXISTING BASELINE

CEQA requires that a lead agency include a description of the physical environmental conditions in the vicinity of the Project as they exist at the time environmental review commences.⁶⁰ As numerous courts have held, the impacts of a project must be measured against the “real conditions on the ground.”⁶¹ The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project’s impacts.⁶² Use of the proper baseline is critical to a meaningful assessment of a project’s environmental impacts.⁶³ An agency’s failure to adequately describe the existing setting contravenes the fundamental purpose of the environmental review process, which is to determine whether there is a potentially substantial, adverse change compared to the existing setting.

Baseline information on which a lead agency relies must be supported by substantial evidence.⁶⁴ The CEQA Guidelines define “substantial evidence” as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion.”⁶⁵ “Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion

⁵⁸ *Stoepthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17.

⁵⁹ 14 CCR § 15124; see, *Laurel Heights I*, *supra*, 47 Cal.3d 376, 192-193.

⁶⁰ CEQA Guidelines, § 15125, subd. (a).

⁶¹ *Save Our Peninsula Com. v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the Sea v. Bd. of Supervisors* (1986) 183 Cal.App.3d 229, 246.

⁶² CEQA Guidelines, § 15125, subd. (a).

⁶³ *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Ca.4th 310, 320.

⁶⁴ *CBE v. SCAQMD*, *supra*, 48 Ca.4th at 321 (stating “an agency enjoys the discretion to decide [...] exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence”); see *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁶⁵ CEQA Guidelines §15384.

supported by facts ... [U]nsubstantiated opinion or narrative [and] evidence which is clearly inaccurate or erroneous ... is not substantial evidence.”⁶⁶

A. The IS/MND Incorrectly Relies on Baseline Conditions that Did Not Exist At the Time Environmental Review Commenced.

The California Supreme Court, in *Communities for a Better Environment v. South Coast Air Quality Management District* (“*CBE v. SCAQMD*”),⁶⁷ recognized that “the baseline ‘normally’ consists of ‘the physical environmental conditions in the vicinity of the project, as they exist at the time ... environmental analysis is commenced....”⁶⁸ This decision considered a long line of Court of Appeal decisions that hold, in similar terms, that the impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis.⁶⁹ This line of authority includes cases where a plan or regulation allowed for greater development or more intense activity than had so far actually occurred, as well as cases where actual development or activity had, by the time CEQA analysis was begun, already exceeded that allowed under the existing regulations.⁷⁰

⁶⁶ Pub. Resources Code § 21082.2(c).

⁶⁷ (2010) 48 Cal. 4th 310, 321 (agency erred in using boilers' maximum permitted operational levels as a baseline when operation of the boilers at maximum levels was not the norm).

⁶⁸ *CBE v. SCAQMD*, *supra*, 48 Ca.4th 310, 327–328, citing Guidelines, § 15125, subd. (a)

⁶⁹ *Environmental Planning Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354, 357-358 (effects of a proposed area plan for land development must be compared to the existing physical conditions in the area, rather than to development permitted under the county's general plan); *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 246-247 (effects of rezoning must be compared to the existing physical environment, rather than to development allowed under a prior land use plan); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955 (baseline for water diversion project was actually existing stream flows, not minimum stream flows set by federal license); *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121 (water use baseline for analysis of proposed land development was actual use without the project, not what the applicant was entitled to use for irrigation); *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 658 (baseline for proposed expansion of a mining operation must be the "realized physical conditions on the ground, as opposed to merely hypothetical conditions allowable under existing plans"); *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 693, 706-710 (effects of a large office and shopping center development must be compared to the current undeveloped condition of the property, rather than to an office park that could be developed under existing zoning).

⁷⁰ *CBE v. SCAQMD*, *supra*, 48 Ca.4th 310, 321.

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In *CBE v. SCAQMD*, the Supreme Court identified circumstances under which a lead agency could deviate from the “normal” baseline of conditions existing at the date the Notice of Preparation (“NOP”) is released. ConocoPhillips had applied to modify an operating petroleum refinery in a way that would increase operation of four boilers that produced steam for refinery operations.⁷¹ The lead agency selected as the project's baseline for nitrogen oxide emissions the amount the boilers would emit if they operated at the maximum level allowed under ConocoPhillips's existing permits, even though ConocoPhillips had never operated them at that level.⁷² Citing that refinery operations “vary greatly with the season, crude oil supplies, market conditions, and other factors,”⁷³ the court explained that agencies may exercise discretion to accommodate a “temporary lull or spike in operations that happens to occur at the time of environmental review.”⁷⁴ The Court held that a lead agency enjoys the discretion to decide how the existing physical conditions can most realistically be measured, supported by substantial evidence.⁷⁵ The Court rejected the “maximum level permitted” baseline because it did not aim to reflect existing conditions.

Some subsequent cases,⁷⁶ as well as the CEQA Guidelines,⁷⁷ have allowed lead agencies to deviate from using the start of environmental review as the

⁷¹ *Id.* at 318.

⁷² *Id.* at 316.

⁷³ *Id.* at 327.

⁷⁴ *Id.* at 328.

⁷⁵ *Id.*

⁷⁶ See *North County Advocates v. County of Carlsbad* (2015) 241 Cal.App.4th 94, 105 (upholding use of recent historical traffic levels as a baseline for currently operating shopping mall with greater-than-usual vacancies, noting that “the nature of a shopping center is that tenants change and the amount of occupied space constantly fluctuates”); *San Francisco Baykeeper, Inc. v. State Lands Commission* (2015) 242 CA4th 202, 218 (upholding a baseline for a continuously operating sand mine that was derived from 5 years of historical mining operations, noting that the amount of sand mined fluctuates substantially from year to year due to a variety of factors); *Association of Irrigated Residents v. Kern County Board of Supervisors* (2017) 17 CA5th 708, 709 (upholding baseline based on oil refinery’s last year of full operations, noting that the facility was currently in operation at the time of the NOP and its permits remained in place); *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 CA4th 316 (upholding baseline closely approximating historic water use of egg farm in 2004, noting that egg farm only ceased operations after NOP date in 2005).

⁷⁷ CEQA Guidelines, Section 15125(a)(1) (providing, “[w]here existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence. In addition, a lead agency may also use baselines consisting of both existing

baseline when assessing existing facilities/operations in limited situations “where conditions change or fluctuate over time.” However, in most cases, the facility/operation was still operating to some extent at the time of CEQA review.⁷⁸

For example, in *Association of Irrigated Residents v. Kern County Board of Supervisors*,⁷⁹ the court reviewed the baseline set for an oil refinery that temporarily suspended refining operations at the time of the NOP. The baseline was set at operating levels of the facility in 2007, when the refinery was operating at full capacity, whereas in 2013, the date of the NOP, no refining operations were occurring. The court articulated the baseline analysis as such:⁸⁰

Our analysis of County’s treatment of the baseline question breaks the County’s approach into two factual components. The first inquiry considers the basic question of whether County has a sufficient evidentiary basis for finding existing conditions included an *operating* refinery. If that finding is upheld, the second inquiry addresses whether substantial evidence supports County’s choice of 2007 as a *realistic measure* of the baseline physical conditions created by the refinery’s operations. [emphasis in original text]

To the first inquiry, the court “conclude[d] the EIR’s choice of 2007 as the measure of an existing conditions baseline for an operating refinery (1) was supported by substantial evidence.”⁸¹ The court noted that suspension of operations was intended as temporary, and that the refinery had a “history of fluctuating operations”⁸² – the refinery frequently started and stopped refining operations. The court noted as relevant that when the refinery suspended operations at the time of the NOP, the refinery “continued other operations and activities. Those continuing activities included managing inventory, blending and marketing fuels, and functioning as a terminal for crude oil and finished petroleum products.”⁸³ To the second inquiry, substantial evidence supported that the 2007 figure was a reasonable representation of the operations actually performed at the refinery.⁸⁴

conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record”).

⁷⁸ See note 57.

⁷⁹ (2017) 17 CA5th 708.

⁸⁰ *Id.* at 728.

⁸¹ *Id.* at 718.

⁸² *Id.*

⁸³ *Id.* at 720.

⁸⁴ *Id.* at 729.

In *North County Advocates v. County of Carlsbad*,⁸⁵ the court upheld the use of recent historical traffic levels as a baseline for an operating shopping mall with that had greater-than-usual vacancies. Specifically, a large department store retail space in the mall was vacant at the time of the NOP. In determining the scope of baseline operations, the court analyzed the historical occupancy of the mall. The court noted that, although the retail space in question was vacant at the time CEQA review commenced, the mall remained operational. The court observed that the department store retail space within the mall frequently fluctuated in occupancy – for instance, “the Robinsons-May space was less occupied from 2007 through 2009 (two retail users occupied part of it from August 2006 through December 2007, and two others occupied part of it from August through November in 2008 and in 2009.” The court concluded, “[w]e view this fluctuating occupancy—which is ‘the nature of a shopping center’—as akin to the varying oil refinery operations in *Communities for a Better Environment*.”⁸⁶ Therefore, the court permitted the shopping center to use a baseline that assumed the department store retail space was occupied.

In *Hollywoodians Encouraging Rental Opportunities v. City of Los Angeles et al.* (“*Hollywoodians*”),⁸⁷ the Court of Appeal considered whether the City of Los Angeles adopted the proper baseline for a project to convert a vacant 18-unit apartment building into a boutique hotel. In July 2015, the owner submitted to the City an application for the hotel project, seeking to convert the property into a boutique hotel with 24 guest rooms. In December 2015, the City adopted an MND for the project. Although the court noted that “the date for establishing baseline cannot be a rigid one,” at the time the environmental analysis for the Project was commenced in 2015, the existing condition of the property did not include rent-stabilized apartments, as the building had been withdrawn from the rental market as of May 2013 pursuant to the Ellis Act, and was uninhabited. Thus, the City properly determined the baseline from which to measure the Project's impact on population and housing was a vacant building that was no longer part of the Hollywood rental market.

Here, the Project site includes vacant light industrial/business park facilities. The IS/MND fails to disclose how long the Project site has been vacant. However, the Project site appears to have been vacant for several years. In April 2014, Toyota

⁸⁵ (2015) 241 Cal.App.4th 94.

⁸⁶ *Id.*

⁸⁷ (2019) 37 Cal.App.5th 768.

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announced that it intended to move its headquarters to Plano, Texas, by the end of 2017.⁸⁸ The Plano headquarters opened in July 2017.⁸⁹ The Applicant purchased the Project site in October 2017, suggesting that Toyota completely vacated the facilities by then. Therefore, the “normal” baseline described in *CBE v. SCAQMD* and *Hollywoodians*, which should reflect the physical environmental conditions in the vicinity of the project, as they exist at the time environmental analysis is commenced, is of vacant facilities.⁹⁰

The IS/MND fails to provide substantial evidence to justify deviation from the “normal” baseline. The IS/MND cannot provide this evidence because operations on the Project site had completely ceased, which makes this project plainly distinguishable from *Association of Irrigated Residents v. Kern County Board of Supervisors*,⁹¹ *CBE v. SCAQMD*,⁹² *North County Advocates v. County of Carlsbad*,⁹³ and other leading cases⁹⁴ allowing use of recent historical conditions as a baseline. Those cases all involved operations active at the time of environmental review experiencing a temporary “lull” due to their “history of fluctuating conditions.”⁹⁵ Here, the Project involves a completely vacated facility at the start of environmental review; Toyota did not merely halt operations for a period – it completely vacated the premises. And unlike the shopping mall in *North County Advocates*, which sought to fill a vacant space in an existing mall, or the refinery in *AIR v. Kern*, which had ongoing refining operations at the time of CEQA review, the Project has no relationship to the former Toyota facilities, is not filling an existing vacancy in an otherwise operating facility, and is not an expansion or replacement of components of an existing facility. Rather, the Project proposes to demolish the

⁸⁸ Daily Breeze, Toyota unveils designs for Texas headquarters that will replace Torrance offices in 2017 (June 24, 2015), <https://www.dailybreeze.com/2015/06/24/toyota-unveils-designs-for-texas-headquarters-that-will-replace-torrance-offices-in-2017-2/>; Daily Breeze, Toyota will move about 3,000 jobs from Torrance to Texas (April 28, 2014) <https://www.dailybreeze.com/2014/04/28/toyota-will-move-about-3000-jobs-from-torrance-to-texas/>.

⁸⁹ Toyota Newsroom, One Toyota: Three Locations, One Year Later (July 24, 2018) <https://pressroom.toyota.com/one-toyota-three-locations-one-year-later/>; Dallas Morning News, After Toyota moved 2,800 workers from around the U.S. to Plano, how is Texas working out? (July 31, 2018) <https://www.dallasnews.com/business/local-companies/2018/07/31/after-toyota-moved-2800-workers-from-around-the-u-s-to-plano-how-is-texas-working-out/>.

⁹⁰ *CBE v. SCAQMD*, *supra*, 48 Ca.4th 310, 327–328, citing Guidelines, § 15125, subd. (a).

⁹¹ (2017) 17 CA5th 708.

⁹² (2010) 48 Ca.4th 310, 320.

⁹³ (2015) 241 Cal.App.4th 94.

⁹⁴ See note 57.

⁹⁵ *Id.*

site's currently vacant office buildings to construct brand new light industrial uses at the Project site. Therefore, the IS/MND lacks evidence for finding existing conditions included *operating* facilities.

The IS/MND's baseline also lacks substantial evidence because it is internally inconsistent. Although the IS/MND's VMT analysis takes credit for baseline operations of the existing facilities, the traffic study states: "as requested by the City, the traffic study for the proposed project will not take trip credits for the existing land uses." This inconsistent baseline must be revised.

An EIR must be prepared to include baseline analyses which reflect the conditions existing at the Project site at the commencement of environmental review, and to revise any impact analyses that utilized the erroneous baseline.

V. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY CAUSE SIGNIFICANT IMPACTS THAT REQUIRE THE CITY TO PREPARE AN EIR

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.⁹⁶ "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."⁹⁷ 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."⁹⁸

CEQA's purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.⁹⁹ 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

⁹⁶ See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.

⁹⁷ *Citizens of Goleta Valley v. Bd. of Supervisors* ("Goleta Valley") (1990) 52 Cal.3d 553, 564, internal citations omitted.

⁹⁸ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁹⁹ See Pub. Resources Code, § 21100

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supports a fair argument that a project may have a significant effect on the environment.¹⁰⁰

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 record before the public agency that the project, as revised, *may* have a significant effect on the environment.¹⁰¹

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.”¹⁰² The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.¹⁰³ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.¹⁰⁴

¹⁰⁰ Pub. Resources Code, §§ 21080, subd. (d), 21082.2, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15064, subds. (f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (“*Laurel Heights II*”) (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* (“*Quail Botanical*”) (1994) 29 Cal.App.4th 1597, 1601- 1602.

¹⁰¹ Pub. Resources Code, § 21064.5 (emphasis added).

¹⁰² See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

¹⁰³ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754

¹⁰⁴ *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 (“*Friends of B Street*”) (“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”).

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“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.”¹⁰⁵ 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. 13 Pub. Resources Code, § 21064.5 (emphasis added).

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.”¹⁰⁶ Deferring formulation of mitigation measures to post-approval studies is generally impermissible.¹⁰⁷ Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.¹⁰⁸ 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.¹⁰⁹ 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.¹¹⁰

With respect to this Project, the MND fails to satisfy the basic purposes of CEQA. The IS/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

¹⁰⁵ CEQA Guidelines, § 15384, subd. (a).

¹⁰⁶ CEQA Guidelines, § 15126.4, subd. (a)(2).

¹⁰⁷ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.

¹⁰⁸ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical*, *supra*, 29 Cal.App.4th at pg. 1604, fn. 5.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

IS/MND lacks basic information regarding the Project’s potentially significant impacts, the IS/MND’s conclusion that the Project will have a less than significant impact on the environment is unsupported.¹¹¹ 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.

A. The City Failed to Disclose and Analyze Potentially Significant Health Risks from Soil Contamination

A lead agency’s significance determination must be supported by accurate scientific and factual data.¹¹² An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.¹¹³

These standards apply to an MND’s analysis of public health impacts of a Project. In *Sierra Club v. County of Fresno*, the California Supreme Court affirmed CEQA’s mandate to protect public health and safety by holding that a CEQA document 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.¹¹⁴ 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.”¹¹⁵ The Court concluded that the County’s EIR was inadequate for failing to disclose the nature and extent of public health impacts caused by the project’s air pollution. As the Court explained, the EIR failed to comply with CEQA because after reading the EIR, “the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”¹¹⁶

¹¹¹ Pub. Resources Code, § 21064.5.

¹¹² 14 C.C.R. § 15064(b).

¹¹³ *Kings County Farm Bureau*, 221 Cal.App.3d at 732.

¹¹⁴ *Sierra Club*, 6 Cal.5th at 518–522.

¹¹⁵ *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

¹¹⁶ *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***” 6012-004acp

Furthermore, in *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (“*Berkeley Jets*”), the Court of Appeal held that a CEQA document must analyze the impacts from human exposure to toxic substances.¹¹⁷ In that case, the Port of Oakland approved a development plan for the Oakland International Airport.¹¹⁸ The EIR admitted that the Project would result in an increase in the release of TACs and adopted mitigation measures to reduce TAC emissions, but failed to quantify the severity of the Project’s impacts on human health.¹¹⁹ The Court held that mitigation alone was insufficient, and that the Port had a duty to analyze the health risks associated with exposure to TACs.¹²⁰ As the CEQA Guidelines explain, “[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.”¹²¹

And in *Cal. Building Industry Ass’n v. Bay Area Air Quality Mgmt. Dist.*,¹²² the California Supreme Court held that the disturbance of contaminated soil is a potentially significant impact which requires disclosure and analysis of health and safety impacts in an EIR.¹²³ The Court explained that “when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users.”¹²⁴

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.¹²⁵ 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

the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.” (Public Resources Code § 21000(d) (emphasis added).)

¹¹⁷ 91 Cal.App.4th at 1369–1371.

¹¹⁸ *Id.* at 1349–1350.

¹¹⁹ *Id.* at 1364–1371.

¹²⁰ *Id.*

¹²¹ 14 C.C.R. § 15003(b).

¹²² (2015) 62 Cal.4th 369.

¹²³ 62 Cal.4th at 388-90; 14 CCR § 15126.2(a).

¹²⁴ 62 Cal.4th at 377.

¹²⁵ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

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subject to a less deferential standard than challenges to an agency's factual conclusions.¹²⁶

Here, the IS/MND failed to disclose, analyze, or mitigate potential hazards from disturbance of soil contamination. The IS/MND lacks any mention of a Phase I or II environmental site assessment conducted for the Project site. The only discussion relating to this impact is:

The Project site is not located on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. Neither would the Project potentially affect, or be affected by, off-site locations listed pursuant to Government Code Section 65962.5. The Project would therefore have no potential to create or result in a significant hazard to the public or the environment regarding or related to Government Code Section 65962.5.¹²⁷

Dr. Clark reviewed publicly available environmental data on the Project site, and found that the Project site is located in the midst of several well-known hazardous waste producers or releases of hazardous waste, which may have resulted in contamination beneath the Project site and/or Project construction may disturb adjacent contamination.¹²⁸ Contrary to the IS/MND's conclusory discussion above, the Project site is adjacent to a number of sites on the list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. Below, DTSC's Envirostor website lists 9 entries for impacted sites (including 3 on the Project Site) in the Envirostor database:¹²⁹

¹²⁶ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

¹²⁷ IS/MND, pg. 3-39.

¹²⁸ Clark Comments, pg. 2.

¹²⁹ Clark, pg. 3.

PROJECT NAME	STATUS	PROJECT TYPE	ADDRESS
19145 Gramercy Place	Active	Voluntary Cleanup	19145 Gramercy Place
FORMER INTERNATIONAL LIGHT METALS FACILITY	POST CLOSURE PERMIT	Post Closure	19200 S Western Ave
HARVEY MACHINE CO	Active	Military Evaluation	
HUGHES AIRCRAFT CO./SCG	No Further Action	Evaluation	19300 Gramercy Place
HUGHES SPACE AND COMMUNICATIONS CO(HSC)	No Action Required	Corrective Action	19300 Gramercy Place
HUGHES SPACE AND COMMUNICATIONS CO(HSC)	CLOSED	Non-Operating	19300 Gramercy Place
INTERNATIONAL LIGHT METALS	Active	Corrective Action	19200 S Western Ave
NORTHROP CORP-AIRCRAFT DIV	No Action Required	Corrective Action	19200 S Western Ave
NORTHROP CORP-AIRCRAFT DIV	PROTECTIVE FILER	Non-Operating	19200 S Western Ave

The Hughes Space and Communications and the Hughes Aircraft Co/SCG listings are within the confines of the Project site. These facilities used a variety of pollutants in their operations, described in detail in Dr. Clark's comments, and were active until 1992. And across Gramercy Place from the Project is the 19145 Gramercy Place Site which is actively being investigated under a Voluntary Cleanup Agreement with DTSC. According to the Envirostor website the potential media affected by the contamination includes indoor air, groundwater, and soil vapor. Recent (July 2021) sampling at the 19145 Gramercy Place showed elevated concentrations of tetrachloroethylene ("PCE") and trichloroethylene ("TCE") in shallow soil vapor samples and deeper soil vapor probes installed in the northern and eastern portion of the 19145 Gramercy Place property.¹³⁰

¹³⁰ Clark, pg. 4-5.
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Across Western Avenue from the Project Site is the Former International Light Metals Facility. During the Facility's operations, hazardous materials and wastes were stored and/or treated at the facility. The hazardous materials included hydrocarbon fuels, chlorinated solvents, acids, caustics, and other hydrocarbon compounds. Waste streams included wastewater from metal plating, cleaning and quenching operations, spent solvents from degreasing systems, spent acids and caustics, sludge, still bottoms, metal chips, dust, waste hydraulic and cooling oils and greases, oil/water mixtures, and other solid wastes.¹³¹ The groundwater investigation for this facility is ongoing.

These contaminants include chemicals with known health impacts if disturbed.¹³² Dr. Clark explains that these contaminants may be disturbed during construction. And workers may be exposed during the completed Project's operation – there is already evidence that vapor intrusion may be occurring at a neighboring site.¹³³ Therefore, there is substantial evidence that the construction and operation of the Project will result in potential for significant soil contamination. Therefore, the IS/MND must be replaced with an EIR that includes an accurate assessment of the risks from hazardous wastes.

B. The City Underestimates Potentially Significant Health Risks

In *Sierra Club v. County of Fresno*, the California Supreme Court held 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.¹³⁴ CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.¹³⁵ Here, the IS/MND's analysis of the Project's health risks has several errors that result in the Project's health impacts being underestimated.

¹³¹ Clark, pg. 5-6.

¹³² EPA, Ground Water Issue, TCE Removal from Contaminated Soil and Ground Water, EPA/540/S-92/002 (January 1992) <https://www.epa.gov/sites/default/files/2015-06/documents/tce.pdf>; American Lung Association, Volatile Organic Compounds, <https://www.lung.org/clean-air/at-home/indoor-air-pollutants/volatile-organic-compounds>; Tetrachloroethylene (Perchloroethylene) 127-18-4 (January 2000) [epa.gov/sites/default/files/2016-09/documents/tetrachloroethylene.pdf](https://www.epa.gov/sites/default/files/2016-09/documents/tetrachloroethylene.pdf); Occupational Safety and Health Administration, Hexavalent Chromium, <https://www.osha.gov/hexavalent-chromium/health-effects>; EPA; 1,4-Dioxane (1,4-Diethyleneoxide) 123-91-1 (January 2000), <https://www.epa.gov/sites/default/files/2016-09/documents/1-4-dioxane.pdf>.

¹³³ Clark, pg. 5.

¹³⁴ *Sierra Club*, 6 Cal.5th at 518–522.

¹³⁵ *Sierra Club*, 6 Cal.5th at 518–522.

Dr. Clark reviewed the health risk analyses conducted for the Project, and noted that the City's method for calculating health risks in the construction phase of the project limits the time period for which each exposure group is evaluated. In their analysis, the City assumes that the receptor aged 0-2 years is present for 200 days and the fetal receptor is present for 92 days (total of 292 days of exposure). But a check of the underlying assumptions in the analysis shows that the total days of construction are 315. This method thus underestimates the potential risk from exposure to diesel particulate matter ("DPM"). Dr. Clark remodeled the analysis using correct parameters with the California Air Resources Board (CARB) HARP 2 model, and found the health risk nearly 3 times higher than calculated by the City. The City must correct this error in an EIR.

Dr. Clark also found that the City's health risk analysis for the *operational* phase of the project underestimates its health risk.¹³⁶ In their analysis the City calculates a health risk from DPM during the operational phase of the Project at 0.86 in 1,000,000 for a 30 year exposure to DPM emitted from the Project site. Using the California Air Resources Board ("CARB") HARP 2 model, the risk calculated for the same sensitive receptor is calculated to be 1.32 in 1,000,000 – more than 53% higher than the City's calculations. The City must correct this error.

Dr. Clark also noted that the City's method for modeling the emissions from the Project site during the construction phase of the Project limits emissions to only 8 hours per day during weekdays.¹³⁷ The City must justify this assumption.

Due to the above errors, the City's analysis of the Project's health risk lacks substantial evidence. A fair argument can be made that these health risks are potentially significant when the analyses are corrected. Therefore, an EIR must be prepared.

C. The IS/MND Fails to Disclose Potentially Significant Impacts Masked by the Erroneous Baseline and Project Description

As explained above, the Project is improperly piecemealed and relies on an incorrect baseline. These errors affect the entirety of the IS/MND's analyses – the IS/MND's disclosures and claims regarding the significance of impacts all lack substantial evidence.

¹³⁶ Clark, pg. 9.

¹³⁷ Clark, pg. 8.

For example, the IS/MND's VMT analysis finds that the Project qualifies as a "small project" generating less than 110 daily trips that results in the presumption that the Project would have less than significant VMT impact.¹³⁸ It makes this finding despite the fact that the trip generation analysis indicates the proposed Project would generate 3,063 daily trips. Mr. Smith explains that the IS/MND achieves this result by deducting theoretical trips of the prior uses of the site that have been abandoned since 2017 and the facilities for which are to be demolished as part of the Project. He concludes that this approach is unsupported by substantial evidence. Mr. Smith also finds that there is no analysis of development or redevelopment of the entire site. As a result, the impacts of the entire Project are not disclosed.

In summary, there are potentially significant transportation impacts – among other types of impacts – that have been masked by the IS/MND's incorrect approach.

D. The IS/MND Fails to Meaningfully Evaluate Cumulative Impacts

An MND must discuss cumulative impacts when they are significant and the project's incremental contribution is "cumulatively considerable."¹³⁹ A project's incremental contribution is cumulatively considerable if the incremental effects of the project are significant "when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects."¹⁴⁰ The court in *Environmental Protection Info. Ctr. v. Dept. of Forestry and Fire Protection*¹⁴¹ explained that the requirement that a cumulative impacts analysis take account of the impacts of past projects "signifies an obligation to consider the present project in the context of a realistic historical account of relevant prior activities that have had significant environmental impacts." Such historical information may help to identify past activities that have caused "intensive environmental impacts" in an area, the full effects of which "may not yet be manifested, thereby disclosing potential environmental vulnerabilities that would not be revealed merely by cataloging current conditions."¹⁴² The court also noted, that an EIR must include information about past projects to the extent such

¹³⁸ Smith, pg. 1.

¹³⁹ 14 Cal Code Regs Sec. 15130(a).

¹⁴⁰ 14 Cal Code Regs Sec. 15065(a)(3).

¹⁴¹ (2008) 44 CA4th 459, 524

¹⁴² 44 CA4th at 524.

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information is relevant to an understanding of the impacts of the project considered cumulatively with other pending and future projects.¹⁴³

In *San Franciscans for Reasonable Growth v. City and County of San Francisco* (“*San Franciscans*”),¹⁴⁴ the court analyzed the adequacy of a cumulative impact analysis in the EIRs prepared for the construction of several high-rise office buildings in the city’s downtown area.¹⁴⁵ The court concluded that related high-rise projects under review should be included in the cumulative analysis.¹⁴⁶ The court reasoned “the development of downtown San Francisco generally occurs bit by bit. No one project may appear to cause a significant amount of adverse effects. However, without a mechanism for addressing the cumulative effects of individual projects, there could never be any awareness of or control over the speed and manner of downtown development. Without such control, piecemeal development would inevitably cause havoc in virtually every aspect of the urban environment.”

Here, the Applicant is redeveloping a large office and industrial park by redeveloping small groups of parcels in different phases. The Applicant’s apparent goal is to transform the vacant Toyota campus into a light industrial business park. As in *San Franciscans*, the phases might not individually appear to cause a significant amount of adverse effects – rather than preparing EIRs, the Applicant only prepared addendums for the first two phases of development, and seeks approval of an MND for this phase. But cumulatively, these phases may have potentially significant environmental impacts that must be analyzed in an EIR. The potential for significant cumulative impacts is high because all phases of the Torrance Commercial Center redevelopment will have similar impacts – the three known phases involve converting office facilities to light industrial facilities. As a result, their effects may easily combine. For instance, due to the temporal proximity of the phases, the phases’ construction schedules may overlap. In fact, the Community Development Department Staff report prepared for the Project states that Phase II construction activities are scheduled for completion in 2022, and the IS/MND states that construction would occur in 2022, and finish by 2023.¹⁴⁷ Concurrent construction may lead to air quality emissions that exceed significance thresholds. Also, the phases may have VMT and traffic impacts when the completed

¹⁴³ 44 CA4th at 525.

¹⁴⁴ (1984) 151 Cal.App.3d 61

¹⁴⁵ *Id.* at 67.

¹⁴⁶ *Id.* at 76-77.

¹⁴⁷ IS/MND, pg. 2-19.

phases are operational due to generating similar patterns of vehicle trips.¹⁴⁸ And whereas one phase may not result in a significant increase in noise, cumulatively, the phases may result in a significant increase. Despite this potential for cumulative impacts, the only analysis of cumulative impacts in the IS/MND merely states that the General Plan previously analyzed them:

The long-term cumulative impacts in the City, pursuant to the Torrance General Plan (2009), were assessed in the General Plan Update Final Environmental Impact Report (EIR) (SCH No. 2008111046). The General Plan EIR identified certain cumulative impacts such as generation of air pollution, 100-year flood protection, construction noise, traffic congestion, limited solid waste disposal facilities in Los Angeles County and limited water supply for Southern California. These cumulative impacts are considered to be previously assessed. The analysis performed in the General Plan EIR assumed the subject site is developed as a business park use. As substantiated herein, the Project would result in incrementally reduced impacts in total when compared to development of the site with business park uses as envisioned under the General Plan EIR. The Project would not result in cumulative impacts not previously considered and addressed in the General Plan EIR. Therefore, the Project does not have impacts that are individually nor cumulatively considerable.

The IS/MND's assessment is not supported by substantial evidence. The analysis is conclusory – the IS/MND does not connect the facts of the Project to the General Plan's actual projections. The IS/MND fails to demonstrate whether the Project or related phases are consistent with the General Plan's assumptions. The IS/MND does not cite to any specific studies conducted for the General Plan that would demonstrate that the Project's cumulative impacts are less than significant. And contrary to the requirements of *Environmental Protection Info. Ctr. v. Dept. of Forestry and Fire Protection* and *San Franciscans* to consider the present project in the context of a realistic historical account of relevant prior activities that have had significant environmental impacts, the IS/MND does not make even brief mention of the related phases of the Torrance Commercial Center redevelopment. As a result, the IS/MND fails as an informational document. And due to the Project's potential cumulative impacts, there is a fair argument that the Project is cumulatively significant. An EIR must be prepared that adequately analyzes cumulative impacts.

¹⁴⁸ Smith, pg. 2.
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E. The IS/MND Fails to Study And Mitigate Potentially Significant Impacts On Biological Resources

The IS/MND reasons that because the Project site is heavily disturbed, the Project site lacks biological resources. However, many species use disturbed land as habitat, such as burrowing owls, rodents, and foraging raptors. The IS/MND acknowledges that onsite trees have the potential to provide suitable nesting habitat for raptors and other migratory non-game native bird species. Despite the potential for species to be present on the site, the City failed to conduct any technical analysis of the Project site's biological resources, which is a failure to adequately establish the environmental setting for the Project site. Without any reasoned or technical analysis, the City's significance findings are not supported by substantial evidence. A satisfactory analysis would require, at minimum, review of biological resource databases such as the California Natural Diversity Data Base ("CNDDDB"), eBird, and iNaturalist for determining occurrence likelihoods of special-status species. An EIR must be prepared that adequately analyzes and mitigates impacts to biological resources.

VI. The City Lacks Substantial evidence to approve the Conditional Use Permit

The Torrance Gateway Project requires a Conditional Use Permit ("CUP"). The Staff Report states that the CUP is required because the Project involves new buildings that exceed 15,000 square feet in gross floor area. But the City is required to make certain environmental findings before a CUP can be approved. Section 95.1.6 of the Torrance Code provides that the Planning Director or Commission may approve a Conditional Use Permit "only if all of the following findings are made in positive manner: [...]"

- 10) The proposed location, size, design, and operating characteristics of the proposed use would not be detrimental to the public interest, health, safety, convenience or welfare, or to the property of persons located in the area;
- 11) The proposed use will not produce any or all of the following results:
 - A) Damage or nuisance from noise, smoke, odor, dust or vibration,
 - B) Hazard from explosion, contamination or fire,
 - C) Hazard occasioned by unusual volume or character of traffic or the congregating of large numbers of people or vehicles;

Here, our comments contain substantial evidence that the Project has potentially significant environmental impacts. These include health risks from disturbance of soil contamination and diesel particulate matter. The preceding comments also demonstrate that the City's conclusions regarding other impacts are based on flawed analyses that underestimate impacts: the City fails to consider the whole of the Project, either in the project description or in a cumulative impacts analysis, and the City masks impacts using an erroneous baseline.

VII. THE PROJECT FAILS TO COMPLY WITH THE SUBDIVISION MAP ACT

The Project includes a Tentative Parcel Map to subdivide the Project site into subdividing the project site, totaling 39.85 acres, into five new parcels (Parcels 1, 2, 3, 4, 5) measuring 7.63 acres, 8.08 acres, 8.03 acres, 7.89 acres, and 7.28 acres, respectively, for a resulting 38.91 acre site, with a remaining 0.94 acre utilized toward street easements.

The IS/MND fails to analyze this component of the Project. The IS/MND therefore lacks substantial evidence to support the Subdivision Map Act's required factual findings to approve the Tentative Parcel Map, which require the City to find that a proposed subdivision is consistent with the general plan/specific plan, and does not have any detrimental environmental or public health effects.¹⁴⁹ In addition, as discussed in Section V above, there is substantial evidence demonstrating that the Project is likely to have potentially significant environmental impacts. These impacts are not mitigated. As a result, the Project fails to comply with mandatory Map Act requirements and the City cannot make the requisite findings to approve the Project's Tentative Parcel Map.

The purpose of the Map Act is to regulate and control design and improvement of subdivisions with proper consideration for their relation to adjoining areas, to require subdividers to install streets and other improvements, to prevent fraud and exploitation, and to protect both the public and purchasers of subdivided lands.¹⁵⁰ Before approving a tentative map, the Map Act requires the agency's legislative body to make findings that the proposed subdivision map, together with the provisions for its design and improvement, is consistent with the

¹⁴⁹ Gov Code §§66473.5, 66474.

¹⁵⁰ *Pratt v. Adams* (1964) 229 Cal.App.2d 602.
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general plan and any specific plan.¹⁵¹ The Map Act also requires the agency's legislative body to deny a proposed subdivision map in any of the following circumstances:¹⁵²

- (a) the proposed map is ***not consistent with applicable general and specific plans*** as specified in Section 65451.
- (b) the design or improvement of the proposed subdivision is ***not consistent with applicable general and specific plans***.
- (c) the site is not physically suitable for the type of development.
- (d) the site is not physically suitable for the proposed density of development.
- (e) the ***design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat***.
- (f) the ***design of the subdivision or type of improvements is likely to cause serious public health problems***.
- (g) the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

CARECA's comments have provided substantial evidence demonstrating that the Project is likely to have significant, unmitigated impacts on public health. These impacts demonstrate that the Project is "likely to cause substantial environmental damage," and "is likely to cause serious public health problems."¹⁵³ These unmitigated impacts render the Project inconsistent with Map Act requirements. The Map Act therefore requires the City to deny the Project's Tentative Parcel Map pursuant to Government Code Sections 66473.5 and 66474(a), (b), (e), and (f).

VIII. CONCLUSION

The City lacks substantial evidence to support the conclusions in the IS/MND that the Project will have less than significant impacts. Moreover, substantial evidence supports a fair argument that the Project's impacts may be significant and unmitigated. Due to the IS/MND's deficiencies, the City cannot conclude that the Project's impacts have been mitigated to a less than significant level.

¹⁵¹ Gov Code § 66473.5.

¹⁵² Gov. Code § 66474 (emphasis added).

¹⁵³ Gov. Code §§ 66474(a), (b), (e), and (f).
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The CEQA Guidelines require that an EIR be prepared if there is substantial evidence supporting a fair argument that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.¹⁵⁴ As discussed in detail above, there is a fair argument based on substantial evidence that the Project would result in significant adverse impacts not identified in the IS/MND. Moreover, there is substantial evidence the proposed mitigation measures will not reduce potentially significant impacts to a level of insignificance.

We urge the City to fulfill its responsibilities under CEQA by withdrawing the IS/MND and preparing an EIR to address the issues raised in this preliminary comment letter. This is the only way the City and the public can ensure the Project's significant environmental impacts are mitigated to less than significant levels.

Sincerely,



Aidan P. Marshall

Attachments

APM:acp

¹⁵⁴ CEQA Guidelines § 15063(b)(1).
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