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March 16, 2022

Via Email

City of Torrance Planning Commission

Email: PlanningCommission@TorranceCA.Gov

Leo Oorts
Senior Planning Associate
Torrance Community Development Department
Email: loorts@TorranceCA.gov

**Re: Agenda Item 8E: Torrance Gateway Phase III (CUP21-00022,
DIV21-00010, EAS21-00002)**

Dear Planning Commission Members:

We are writing on behalf of **Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA")** to provide comments on the Torrance Gateway Phase III (CUP21-00022, DIV21-00010, EAS21-00002) (SCH Number 2022010161) ("Project"), proposed by T.I. Commerce Center, LLC ("Applicant").¹ The Project appears as Item 8E on the Agenda for the March 16, 2022 Planning Commission hearing, and includes the proposed approval of an Initial Study/Mitigated Negative Declaration ("MND"), Conditional Use Permit ("CUP"), and Division of Lot to allow the subdivision of five parcels.

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

¹ The three entities have the address of 3501 Jamboree Road, Suite 3000 Newport Beach, CA 92660. 6012-006acp

(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.

On February 14, 2022, CREED LA submitted comments on the IS/MND to the City of Torrance Community Development Department ("CDD"), including expert comments. The expert evidence presented in our comments provided substantial evidence supporting a fair argument that the Project will result in significant and unmitigated impacts to transportation, air quality, climate change, and adverse impacts on public health from disturbance of hazardous chemicals on the Project site and from exposure to toxic diesel particulate matter ("DPM") emissions during Project operation. Our comments explained that the City must prepare an environmental impact report ("EIR") to fully disclose and mitigate these impacts.

Instead of preparing an EIR, the City prepared a staff report that contains incomplete and erroneous responses to our comments. The Staff Report incorrectly concludes that, after reviewing comments received from the public, "no new substantial environmental issues have been raised and that all issues raised in the comment letters have been adequately addressed in the IS/MND and in the Response to Comments... Therefore, the findings and conclusions of the IS/MND are not affected, and no revisions are required or proposed."³ As will be explained below, the Staff Report fails to consider and respond to the majority of CREED LA's legal and evidentiary comments, and fails to recognize the unmitigated significant impacts identified in our comments. And, where the Staff Report the analysis contained in the Staff Report in response to comments is inaccurate.

We prepared our rebuttal to the Staff Report with the assistance of air quality and hazardous resources expert James J. Clark, Ph.D.,⁴ and transportation and traffic expert Daniel T. Smith.⁵

² IS/MND, pg. 1-1.

³ C.D.D. Recommendations re Agenda Item No. 8E (Case Nos. EAS21-00002, CUP21-00022, DIV21-00010) (03/16/2022) ("Staff Report"), pg. 1.

⁴ Dr. Clark's technical comments and curricula vitae are attached hereto as Exhibit A.

⁵ Mr. Smith's technical comments and curricula vitae are attached hereto as Exhibit B.
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For these reasons, CREED LA urges the Planning Commission not to approve the IS/MND, CUP, and Division of Lot at the Planning Commission hearing set for March 16, 2022. CREED LA urges the Planning Commission to remand the IS/MND back to Staff to allow for preparation of a legally adequate EIR pursuant to CEQA.

I. The Project is Improperly Piecemealed

In Master Response 1: Project "Piecemealing," the City responds to multiple public comments explaining that the Project has been improperly piecemealed. The City relies on an overly simplified legal standard for what constitutes piecemealing, in violation of CEQA:

Piecemeal review does not occur when a project is structurally, legally, and financially independent from other projects. This is also the case for the Project evaluated in the MND. Two or more projects may be developed by the same company (in this case, SRG) so long as each project has independent utility and does not require the other to proceed.⁶

This interpretation oversimplifies piecemealing caselaw. As explained in our initial comments, the Court in *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora*⁷ 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.” The court in *Tuolumne County* stated that activities should be evaluated for whether they are “related in (1) time, (2) physical location and (3) the entity undertaking the action.”⁸ “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.”⁹

Here, as explained in our initial comments, the facts support a conclusion that the Project’s environmental review has been improperly piecemealed. The

⁶ Staff Report, pg. 33.

⁷ (“*Tuolumne County*”) (2007) 155 Cal.App.4th 1214.

⁸ *Tuolumne County*, 155 Cal.App.4th at 1227.

⁹ *Id.*

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Applicant purchased the 110-acre office campus from Toyota in a single purchase in 2017, and set out to redevelop the campus as the “Torrance Commerce Center development.”¹⁰ The sub-projects of this redevelopment are united by (1) time, (2) physical location and (3) the entity undertaking the action. As a result, this situation is comparable to the project at issue in *Tuolumne County*, in which the court explained that “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.”¹¹

The Staff Report also argues that “the mere proximity of two or more projects and common identity of a parent company does not demand that those projects be evaluated as one project in a single EIR, when those projects are separated by time, space, and other factors. (See, e.g., *National Parks and Conservation Assn. v. County of Riverside* (1996) 42 Cal.App.4th 1505, 1519; *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1358; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70.)

The cases cited to by the City do not support the City’s conclusion, and have key differences from this Project.

In *Communities for a Better Environment v. City of Richmond*, the court stated, “the projects at issue here, the hydrogen pipeline and the Refinery upgrade, are independently justified, separate projects with **different project proponents** — not piecemealed components of the same project. At the same time, the City saw that the hydrogen pipeline project was related to the Refinery upgrade, so the pipeline’s **cumulative contribution** to the Project’s environmental impacts **was included in the EIR.**”¹² This case does not support the City’s position because the court explicitly analyzed whether the project had the same proponent. Also, the court noted that the cumulative impacts of the projects were analyzed in the EIR. Here, the projects have the same proponents, and the IS/MND does not discuss their cumulative impacts. The reasoning in this case shows this Project is improperly piecemealed.

¹⁰ 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).

¹¹ *Tuolumne County*, 155 Cal.App.4th at 1227.

¹² (2010) 184 Cal.App.4th 70. [emphasis added]

In *Leonoff v. Monterey County Bd. of Supervisors*,¹³ the court held that a proposed contractor's service center and mini-storage complex were not piecemealed because (1) “[t]here is no evidence at all that these projects will have cumulative effects,”¹⁴ and (2) the lead agency “properly recognized those few features they shared.”¹⁵ But here, the IS/MND fails to provide information regarding the past and future phases of development of the Torrance Commercial Center. The IS/MND fails to analyze the cumulative effects of these phases in the IS/MND. And our initial comments discuss in detail that the projects could have cumulatively significant transportation, traffic, noise, greenhouse gas, air quality, and public health impacts, among others. The reasoning in this case shows that the scope of the IS/MND is defective.

In *National Parks and Conservation Assn. v. County of Riverside*,¹⁶ the court considered an EIR for a landfill, addressing the issue of whether facilities which would process trash to be dumped in the landfill (called “MRFs”) must be discussed in detail in the EIR. The court held they did not need to be analyzed in detail in the EIR, because “it is difficult to see how much more detailed, useful information about these MRF's can be supplied at the present when it is not known where they will be situated and who will be operating them.”¹⁷ The court also reasoned that “[s]ince information is available about the method of operation of the MRF's both in the EIR and in the statutory scheme of the Act, this EIR for the landfill adequately apprises the interested parties of the true scope of the project to allow intelligent weighing of its environmental consequences.”¹⁸ This case is factually distinct from the Torrance Commercial Center, as the location of the Project phases is concrete – the former Toyota campus. Further, the IS/MND does not provide any information regarding the true scope of the Project – none of the other phases are discussed at all.

In summary, the above cases show that the IS/MND improperly fails to analyze the effects of the entire project.

The City also argues that a project cannot be improperly piecemealed from project components that have already been approved: “As an initial matter, at least some of the comments appear to argue that the Project has been piecemealed from

¹³ (1990) 222 Cal.App.3d 1337.

¹⁴ *Id.* at 1358.

¹⁵ *Id.*

¹⁶ (1996) 42 Cal.App.4th 1505.

¹⁷ *Id.* at 1518-1519.

¹⁸ *Id.* at 1520.

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past approvals or development - even if true, that is irrelevant, as already approved (and/or developed) projects could never be part of *proposed* project.”¹⁹ This argument was rejected by the court in *Arviv Enterprises, Inc. v. South Valley Area Planning Commission*,²⁰ where the developer also 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.²¹ But the court disagreed, requiring the developer to prepare an EIR for the entire project.²²

II. The City Fails to Consider Expert Evidence of Potentially Significant Impacts to Air Quality, Greenhouse Gases, and Public Health

In Master Response 2, the City dismisses expert comments identifying flaws in the IS/MND’s analysis of air quality, greenhouse gases, and health risk impacts. The City reasons that the expert comments “evidence a ‘difference of opinion’ regarding how to undertake air quality and greenhouse gas analyses.”²³ As a result, “[d]espite disagreement expressed by the Commentors, the MND prepared for the Project including, but not limited to, supporting AQIA, GHGA, and HRA are considered adequate, complete, and represent a good faith effort at full disclosure.”²⁴

However, as explained in the attached comment letters from Dr. Clark and Mr. Smith, the IS/MND’s flaws are not a “difference of opinion.” Their comments explain that the City’s approach is not supported by substantial evidence. Rather, their comments contain substantial evidence showing that the Project may have a significant effect on the environment.

Further, the City’s claim that the expert comments only “evidence a ‘difference of opinion’” is unsubstantiated – the Staff Report fails to engage with specific, technical comments contained in their letters, in violation of CEQA’s requirements. Instead, the City mistakenly relies on a legal standard to claim that consideration of dissenting comments is unnecessary. The Planning Commission must not approve the IS/MND before Staff fully engages with the technical expert comments, and prepares an EIR containing the necessary revisions.

¹⁹ Staff Report, pg. 32.

²⁰ (“*Arviv*”) (2002) 101 Cal. App. 4th 1336.

²¹ *Arviv*, 101 Cal. App. 4th at 1348.

²² *Id.* at 1350.

²³ Staff Report, pg. 36.

²⁴ Staff Report, pg. 37.

III. The City Fails to Revise Its Flawed Transportation Analysis and Mitigate Significant Impacts

In Master Response 3, the City dismisses expert comments' critiques of the City's use of an erroneous baseline in its VMT analysis. Our transportation expert's comments explained that the IS/MND's assessment of transportation baseline conditions is not supported by substantial evidence because the existing facility has been vacant for years. But, as in Master Response 3, the Staff Report labels these expert comments as a "difference of opinion." As demonstrated in the attached expert comments, the City's analysis is objectively flawed, and masks a potentially significant transportation impact.

IV. The City Still Fails to Analyze the Potentially Significant Impacts of Disturbance of Soil Contamination.

In our IS/MND comments, we explained that the City failed to disclose and analyze potentially significant health risks from soil contamination. The IS/MND lacks any mention of a Phase I or II environmental site assessment conducted for the Project site, despite the presence of nearby sites with soil contamination, as identified by Dr. James Clark. He explains that the lack of any analysis creates potential for health impacts resulting from disturbance of soil on the Project site.

In the City's single response to our specific comments, the Staff Report dismisses Dr. Clark's determinations. The City claims that there "is no significant soil contamination present on the Project site nor is there evidence of vapor intrusion at the Project site."²⁵ But the reason there is no positive evidence of contamination is that the City did not sample the soil for contamination or analyze the risks of disturbing soil on the Project site. And Dr. Clark's comments do not assert that contamination has been detected onsite – but that contamination is possible, and that its disturbance has potential health impacts.²⁶

Further, the City's response fails to acknowledge that analysis of health and safety impacts from soil contamination is required by CEQA. 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

²⁵ Staff Report, pg. 46.

²⁶ Clark Comments, pg. 2.

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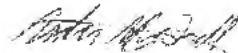
substances.²⁷ And in *Cal. Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.*,²⁸ the California Supreme Court held that the disturbance of contaminated soil is a potentially significant impact which requires disclosure and analysis of health and safety impacts in an EIR.²⁹

V. Conclusion

The Planning Commission cannot approve the Project until the City complies with its legal duty to prepare an EIR for the Project. The City was presented with substantial evidence from several commenters, including CREED LA, supporting a fair argument that the Project has potentially significant impacts that the IS/MND fails to disclose and mitigate. The Staff Report did not respond to our letter beyond the four responses discussed above. And those responses did not engage with the technical substance of our expert comments, resulting in the IS/MND's flaws remaining unresolved. As a result, the Project still has potentially significant impacts to transportation, climate change, air quality, and impacts to public health from disturbance of hazardous chemicals on the Project site and from toxic DPM emissions.

CREED LA urges the Planning Commission not to approve the Project before an EIR is prepared.

Sincerely,



Aidan P. Marshall

Attachments

APM:acp

²⁷ 91 Cal.App.4th at 1369-1371.

²⁸ (2015) 62 Cal.4th 369.

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