

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

TEL: (916) 444-6201

FAX: (916) 444-6209

kcarmichael@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

601 GATEWAY BLVD., SUITE 1000
SO. SAN FRANCISCO, CA 94080

TEL: (650) 589-1660

FAX: (650) 589-5062

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel

MARC D. JOSEPH
DANIEL L. CARDOZO

December 14, 2022

Via Email and Overnight Mail

Esther Ahn, Planner
Planning Department
City of Los Angeles
200 N. Spring St. Room 763
Los Angeles, CA 90012
Email: esther.ahn@lacity.org

Re: **Comments on the Mitigated Negative Declaration for the Valor Elementary School Project (ENV-2022-5866-MND)**

Dear Ms. Ahn:

On behalf of **Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA")**, we respectfully submit these comments on the City of Los Angeles' ("City") Mitigated Negative Declaration¹ ("MND") prepared for the Valor Elementary School Project (ENV-2022-5866-MND) ("Project") proposed by Bright Star Schools ("Applicant") and prepared pursuant to the California Environmental Quality Act ("CEQA")² by the City of Los Angeles ("City").

The Project proposes to construct a one and two-story, 26.5-foot-tall, elementary school building with 28 classrooms, totaling 23,538 square-feet. for grades transitional kindergarten ("TK") through 4; a 3,182 square-foot multi-purpose room, administrative spaces, corridors, storage spaces, and covered outdoor dining, and a surface parking lot with an ingress/egress driveway off Plummer Street.³ The elementary school building would have a total building area of 34,755 sf and would accommodate a maximum enrollment of 552 students. The Project would also include 30,726 sf of open space and landscaping, including two play areas totaling 13,060 square-feet.

¹ City of Los Angeles, Mitigated Negative Declaration, Valor Elementary School Project ("MND") Case No: ENV-2022-5866-MND (November 2022) available at <https://planning.lacity.org/odocument/4665dfef-ecad-42b5-80b6-575ca5e17851/ENV-2022-5866.pdf>

² Public Resources Code § 21000 *et seq.*; 14 Cal. Code Regs. ("C.C.R.") §§ 15000 *et seq.*

³ MND, p .1. L6402-005j

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The Project site located at 15526-15544 Plummer Street, Los Angeles, CA 91343, on Assessor Parcel Numbers (“APN”) 265-601-5007 and 265-601-5008, which are approximately 1.30 acres in size, and 0.76 acre in size respectively. The 1.30-acre parcel is currently undeveloped and covered with grasses, shrubs, and various mature trees, and the 0.76-acre parcel is currently developed with a one-story single-family residence with similar vegetation as the larger parcel. The site contains 56 trees/shrubs (including nine protected native trees/shrubs and 32 non-protected significant trees), and two street trees.

Our review of the MND demonstrates that the MND fails to comply with CEQA. As explained more fully below, the MND fails to accurately disclose the extent of the Project’s potentially significant impacts on air quality, public health, hazards, public services, and noise. There is more than a fair argument that the Project will result in significant, unmitigated impacts in each of these areas. The City may not approve the Project until the City prepares an Environmental Impact Report (“EIR”) that adequately analyzes the Project’s potentially significant impacts and incorporates all feasible mitigation measures to avoid or minimize these impacts. As a result of these deficiencies, the City also cannot make the requisite findings to approve the Project under the City’s municipal code.⁴

These comments were prepared with the assistance of environmental health, air quality, and GHG expert Dr. James Clark, Ph.D., and noise expert Ani Toncheva of Wilson Ihrig. Comments and curriculum vitae of Dr. Clark are attached to this letter as Attachment A.⁵ Ms. Toncheva’s comments and curriculum vitae are included as Attachment B.⁶ Attachments A and B are fully incorporated herein and submitted to the City herewith. Therefore, the City must separately respond to the technical comments in Attachments A and B.

For the reasons discussed herein, and in the attached expert comments, CREED LA urges the City to remedy the deficiencies in the MND by preparing a legally adequate EIR and recirculating it for public review and comment.⁷

⁴ Pub. Res. Code § 21081; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

⁵ Attachment A: Comments on Valor Elementary School Project (December 13, 2022) (“Clark Comments”).

⁶ Attachment B: Comments on Valor Elementary School Project (December 14, 2022) (“Toncheva Comments”).

⁷ We reserve the right to supplement these comments at later hearings on this Project. Gov. Code § 65009(b); Public Resources Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199–1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

1 cont.

I. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations formed to ensure that the construction of major urban projects in the Los Angeles region proceed in a manner that minimizes public and worker health and safety risks, avoids, or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The association 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 Los Angeles region.

Individual members of CREED LA live in the City of Los Angeles, and work, recreate, and raise their families in the City 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 on site.

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

CREED LA supports the development of commercial, mixed use, and educational projects where properly analyzed and carefully planned to minimize impacts on public health, climate change, and the environment. These projects should avoid adverse impacts to air quality, public health, climate change, noise, and traffic, and must incorporate all feasible mitigation to ensure that any remaining adverse impacts are reduced to the maximum extent feasible. Only by maintaining the highest standards can commercial development truly be sustainable.

II. AN EIR IS REQUIRED

CEQA is designed to inform decision-makers and the public about the potential, significant environmental effects of a project.⁸ “CEQA’s fundamental goal [is] fostering informed decision-making.”⁹ “The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind.”¹⁰

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR, except in certain limited circumstances.¹¹ The EIR is the very heart of CEQA.¹² The EIR acts like an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.”¹³ The EIR aids an agency in identifying, analyzing, disclosing, and, to the extent possible, avoiding a project’s significant environmental effects through implementing feasible mitigation measures.¹⁴ The EIR also serves “to demonstrate to an apprehensive citizenry that the [agency] has analyzed and considered the ecological implications of its action.”¹⁵ Thus, an EIR “protects not only the environment but also informed self-government.”¹⁶

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.”¹⁷ The EIR aids an agency in identifying, analyzing, disclosing, and, to the extent possible, avoiding a project’s significant environmental effects through implementing feasible mitigation measures.¹⁸ In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact. Because “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process” by allowing the agency to dispense with the duty to

⁸ 14 Cal. Code Regs. (“CEQA Guidelines”) § 15002, subd. (a)(1).

⁹ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 402.

¹⁰ *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283.

¹¹ See, e.g., Pub. Resources Code, § 21100.

¹² *Dunn-Edwards v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644, 652.

¹³ *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1220.

¹⁴ Pub. Resources Code § 21002.1(a); CEQA Guidelines § 15002(a), (f).

¹⁵ *No Oil, Inc. v. City of Richmond* (1974) 13 Cal.3d 68, 86.

¹⁶ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

¹⁷ Pub. Resources Code, § 21080, subd. (d) (emphasis added); CEQA Guidelines, § 15064; see also *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927; *Mejia v. City of Richmond* (2005) 13 Cal.App.4th 322.

¹⁸ Pub. Resources Code, § 21002.1, subd. (a); CEQA Guidelines, § 15002, subd. (a) & (f).

prepare an EIR, negative declarations are allowed only in cases where there is not even a “fair argument” that the project will have a significant environmental effect.¹⁹

Under the fair argument standard, a lead agency “shall” prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.²⁰ The phrase “significant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.”²¹ In certain circumstances, a project with potentially significant impacts can be modified by the adoption of mitigation measures to reduce the impacts to a level of insignificance. In such cases, an agency may satisfy its CEQA obligation by preparing a mitigated negative declaration.²² A mitigated negative declaration, however, is subject to the fair argument standard. Thus, an MND is inadequate, and an EIR is required, whenever substantial evidence in the record supports a “fair argument” that significant impacts may occur, even with the imposition of mitigation measures.

The “fair argument” standard is an exceptionally “low threshold” favoring environmental review in an EIR rather than a negative declaration.²³ The “fair argument” standard requires the preparation of an EIR if any substantial evidence in the record indicates that a project may have an adverse environmental effect.²⁴ As a matter of law, substantial evidence includes both expert and lay opinion.²⁵ Even if other substantial evidence supports the opposite conclusion, the agency nevertheless must prepare an EIR.²⁶ Under the “fair argument” standard, CEQA always resolves the benefit of the doubt in favor of the public and the environment.

3 cont.

¹⁹ *Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440; Pub. Resources Code, §§ 21100, 21064.

²⁰ Pub. Res. Code §§21080(d), 21082.2(d); 14 Cal. Code Reg. §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Richmond* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

²¹ Pub. Resources Code, § 21068.

²² Pub. Resources Code, § 21064.5; CEQA Guidelines, § 15064, subd. (f)(2).

²³ *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

²⁴ CEQA Guidelines, § 15064, subd. (f)(1); *Pocket Protectors v. City of Sacramento, supra*, 124 Cal.App.4th at 931.

²⁵ Pub. Resources Code, § 21080, subd. (e)(1); CEQA Guidelines, § 15064, subd. (f)(5).

²⁶ *Arviv Enterprises v. South Valley Area Planning Comm.* (2002) 101 Cal.App.4th 1333, 1346; *Stanislaus Audubon v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597.

III. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS REQUIRING AN EIR AND THE CITY LACKS SUBSTANTIAL EVIDENCE TO RELY ON AN MND

4

A. There is a Fair Argument that the Project May Result in Significant, Unmitigated Health Risk Impacts

1. The City Failed to Proceed in the Manner Required by Law By Failing to Conduct a Preliminary Endangerment Assessment Pursuant to the California Education Code.

The MND includes a Phase I environmental site assessment (“ESA”) report that identifies several recognized environmental conditions (“REC”) and concludes that a Phase II ESA be completed for the site.²⁷ While a Phase II ESA was completed for the Project site, the City failed to conduct a Preliminary Endangerment Assessment as required under the California Education Code.²⁸

The Education Code outlines a three-step process in assessing whether there has been a release of hazardous waste at a school site consisting of Step 1. Phase I ESA, Step 2. PEA, and Step 3. Response action.²⁹ The PEA required by Step 2 requires consultation with the Department of Toxic Substances Control (“DTSC”) and to enter into an Environmental Oversight Agreement with DTSC, then contract with a qualified environmental consultant to prepare an assessment according to DTSC guidelines.³⁰ Here, the City failed to consult with DTSC in violation of the Education Code. Additionally, based on the results of the Phase I completed for the Project, there is a fair argument that if the City had consulted with DTSC, a PEA would be required. The City must retract the MND and proceed with consultation with DTSC to prepare a PEA for the Project.

4.1

2. The MND Fails to Disclose and Analyze the Potentially Significant Health Risk to Students and Staff from Air Emissions Released from Adjacent Sites

The MND fails to disclose the potential health impacts of placing schoolchildren next to existing sources of pollution located adjacent to the Project

4.2

²⁷ MND, Appendix F, p. v.

²⁸ Ed. Code §17213.1(a)(4)(B).

²⁹ See Ed. Code §§17213.1(a), 17213.1(a)(4), 17213.1(a)(7)

³⁰ Ed. Code §17213.1(a)(4)(B).

site. Dr. Clark found that there are a number of sources that emit toxic air contaminants including VOCs, diesel exhaust, and particulate matter permitted by the South Coast Air Quality Management District (“SCAQMD”) surrounding the Project site.³¹ According to the SCAQMD’s Facility Information Detail (“FIND”) website, there are at least 6 different permitted sites within ½ mile of the Project Site as seen in Figure 5 of Dr. Clark’s comments.³² The MND completely ignores these potential sources of pollution in its air quality analysis and as such fails as an informational document under CEQA.

4.2 cont.

3. There is Substantial Evidence Supporting a Fair Argument That the Project Will Result in Significant, Unmitigated Health Risks from Exposure to Freeway Emissions

The MND’s statement that that health risks are less than significant is unsupported because the MND omits an analysis of several sources of pollution, resulting in underestimated emissions calculations. Dr. Clark reviewed the additional sources, and concludes that, when considered with the other emissions identified in the MND, the resulting health impacts on schoolchildren may be significant. The Project’s health risk impacts must be accurately disclosed, analyzed, and mitigated in an EIR.

4.3

An agency must support its findings of a project’s potential environmental impacts with concrete evidence, with “sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision.”³³ A project’s health risks “must be ‘clearly identified’ and the discussion must include ‘relevant specifics’ about the environmental changes attributable to the Project and their associated health outcomes.”³⁴

Dr. Clark found that the MND’s health risk analysis is little more than a screening assessment of impacts based on unverifiable data. Additionally, he found the Project will result in a significant health risk to the students and staff at the Project site.

³¹ Clark Comments, p. 7.

³² Clark Comments, p. 7.

³³ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

³⁴ *Id.* at 518.

First, Dr. Clark notes that the input files for the Project's HRA were not included in the attachments to the HRA.³⁵ The Project's HRA states:

TAC emissions associated with vehicle traffic on I-405 were estimated based on the methodology and spreadsheet developed by the UC Davis-Caltrans Air Quality Project, Estimating Mobile Source Air Toxics Emissions [MSAT]: A Step-By-Step Project Analysis Methodology (2006). This spreadsheet was designed to estimate the total amount of the six pollutants of concern discussed in Section 2.2, Toxic Air Contaminants, based on total organic gases emission factors and diesel particulate emission factors from EMFAC2021... The spreadsheet outputs from the UC Davis-Caltrans MSAT model and composite emission rates are contained in Appendix A.³⁶

However, these spreadsheets were not included with the HRA and as such act as a black-box precluding analysis of the sufficiency of the HRA by preventing validation of the HRA model inputs.³⁷

Dr. Clark used the same input parameters listed in the AERMOD input file utilized in the HRA for the Project and found that I-405 produces concentrations of TACs at the Project Site that are 1.5 times higher than presented in the HRA, resulting in a significant, unmitigated impact.³⁸

Additionally, while reviewing the AERMOD model inputs used in the HRA, Dr. Clark found that the AERMOD analysis relies on source terms from a model that is not commonly used to assess emissions from freeways and excludes components in the analysis including the actual assumed emission rate of each chemical of concern ("COC") from each class of vehicle moving along I-405. By using an uncommon methodology and omitting the spreadsheets necessary to verify the HRA, the City fails to adequately analyze the Project's health risk impacts.

Finally, according to Dr. Clark, analyses of health risks from I-405 emissions feature a critical flaw leading to inaccurate estimations of Project emissions. The MND's AERMOD modeling calculations of ground-level concentrations of DPM fail to account for building downwash, which occurs when the wind flows over and around buildings and impacts the dispersion of pollution from nearby sources.³⁹ The

³⁵ Clark Comments, p. 8.

³⁶ MND, Appendix B, PDF p. 12.

³⁷ Clark Comments, p. 9.

³⁸ Clark Comments, p. 9.

³⁹ Clark Comments, p. 31.

MND’s air quality analysis fails to explain why building elevations were not considered in the HRA. An updated HRA that accounts for elevation differences must be prepared and included in an EIR.

4.3 cont.

The City must prepare a new HRA that properly identifies the inputs and methodology used to calculate the operational health risk of the Project.

B. The City Lacks Substantial Evidence to Support the MND’s Conclusion that Noise Impacts Would Be Less Than Significant with Mitigation

The CEQA Guidelines require an MND to consider “whether a project would result in...[g]eneration of a substantial temporary or periodic increase in ambient noise levels in the vicinity of the project . . .”⁴⁰ The MND’s noise analysis fails to accurately disclose the Project’s potentially significant noise impacts and fails to mitigate them. Ms. Toncheva concludes that the Project’s construction and operational noise impacts remain significant and unmitigated notwithstanding the mitigation measures proposed in the MND. Ms. Toncheva’s comments provide substantial evidence supporting a fair argument that an EIR is required to accurately disclose and mitigate these impacts.

5

1. The MND Fails to Establish an Adequate Baseline to Measure Project Noise Impacts.

CEQA directs a lead agency to find that a Project would result in a significant impact if the Project would result in generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.⁴¹ In order to establish a baseline to measure noise impacts it is common practice to conduct measurements of ambient noise at locations surrounding a proposed project. Here, the MND’s noise impact analysis is based on two measurements of only 15 minutes each⁴² and one 14-hour long-term measurement on May 25th and 26th.⁴³ Ms. Toncheva explains that the limited data collected to evaluate the Project’s noise impacts may not be representative of the loudest times of day because the noise environment is affected by transportation sources that can change from hour to hour and day to day.⁴⁴ Ms. Toncheva states

5.1

⁴⁰ CEQA Guidelines, Appendix G, Sec. XII(d).

⁴¹ CEQA Guidelines, Appendix G.

⁴² MND, p. 102.

⁴³ MND, p. 103.

⁴⁴ Toncheva Comments, p. 1.

that best practices call for documentation of the existing condition with measurements at different times over several days.⁴⁵ Furthermore, the long-term noise measurement purports to document these changes, but the measurement was taken from the back of the project site where it is partially shielded from both nearby streets and does not capture traffic patterns at residences close to Plummer Street.⁴⁶ Ms. Toncheva found that the short-term Leq at location ST-1 is more than 10 dB higher than the same time frame at LT-1.⁴⁷ Therefore, the long term measurement taken for the Project's noise analysis are not representative of the noise environment surrounding the Project.

5.1 cont.

Ms. Toncheva states in her comments that higher baseline noise levels at the residences on Plummer Street would result in a noise environment that exceeds the normally acceptable CNEL levels for single-family homes per the Land Use and Noise Compatibility Matrix.⁴⁸ The City must prepare an updated baseline analysis that incorporates noise measurements taken at locations surrounding the Project site over a multi-day period in order to properly establish the baseline used in the noise analysis.

2. The MND Fails to Analyze Impacts to All Relevant Noise-Sensitive Receptors

The MND fails to accurately analyze the severity of construction noise impacts on sensitive receptors because it relies on incorrect distances between on-site noise sources and off-site receptors. Ms. Toncheva explains that this error is due to the MND's failure to properly acknowledge how construction sites operate in the MND's selection of where to measure noise levels in relation to sensitive receptors.

5.2

The construction noise calculations use a minimum receptor distance of 50 feet, per the cited LAMC threshold. However, multiple phases of ongoing construction activity, including grading work, may be as close as 6 feet from the adjacent residences, resulting in higher Lmax levels (108 dB).⁴⁹

⁴⁵ Toncheva Comments, p. 1.

⁴⁶ Toncheva Comments, p. 1.

⁴⁷ Toncheva Comments, p. 1.

⁴⁸ Toncheva Comments, p. 1. *see also* MND, p. 105.

⁴⁹ Toncheva Comments, p. 2.

Ms. Toncheva modeled the Project's construction noise at 15516 Plummer Street, which is a single-family residence adjacent to the project site and 6 feet east of the project boundary, using the Federal Highway Administration's ("FHWA") Roadway Construction Noise Model ("RCNM") and found that the Project would result in a 30+ dBA increase over the MND noise threshold during construction⁵⁰

5.2 cont.

Given this failure of analysis the MND failed to accurately assess the severity of the Project's noise impacts on all sensitive receptors, and fails to adequately mitigate them. The City must prepare an EIR to accurately analyze and mitigate these impacts.

3. Mitigation Measures Fail to Reduce Noise Impacts Below Levels of Significance

The MND concludes that noise impacts will be less than significant with implementation of mitigation measure RCM-1, which requires that a barrier be erected during construction.⁵¹ However, this measure is less effective than asserted in the MND. Ms. Toncheva notes that the 12-foot barrier would result in a dBA reduction of 15, which will not be enough to reduce the impacts to nearby sensitive receptors to non-significant levels.⁵²

5.3

Ms. Toncheva found that the mitigation offered by the MND is wholly insufficient. She explains that a reduction of even 15 dBA (the maximum reduction that mitigation measure RCM-1 would provide) is inadequate to mitigate noise impacts at the nearby residences of the Project.⁵³ Ms. Toncheva explains that these errors were the result of the City's reliance on the incorrect interpretation of Municipal Code noise standards, as discussed above. As a result, the noise mitigation proposed in the MND will be ineffective to reduce noise impacts below levels of significance and is not adequate to support a finding of no significant impact with mitigation.

4. The MND Fails to Analyze Operational Noise Impacts

The MND does not provide a quantitative analysis for noise from on-site operations such as activity in the play area, trash-handling, or traffic noise and other activity during pick up/drop off along the driveway directly adjacent to residences.

5.4

⁵⁰ Toncheva Comments, p. 3.

⁵¹ MND, pp. 108-109.

⁵² Toncheva Comments, p. 2.

⁵³ Toncheva Comments, p. 2.

Ms. Toncheva notes that these activities may result in an increase of 5 dB or more over the ambient, resulting in a significant impact. The City must conduct a quantified noise analysis to determine if additional mitigation measures are necessary to reduce the Projects potentially significant operational noise impacts.

5.4 cont.

C. The MND Fails to Analyze and Mitigate the Project’s Potentially Significant Energy Impacts

The MND is inadequate as an environmental document because it fails to properly disclose, analyze, and mitigate the Project’s potentially significant impacts on energy use. The City cannot approve the Project until an EIR is prepared and circulated to resolve these issues and comply with CEQA’s requirements. Namely, the City’s construction energy analysis fails to quantify and adequately assess the Project’s energy consumption impacts during Project construction.

The MND states that Project construction energy use would result through the consumption of gasoline and diesel fuel. The energy use analysis does not analyze electricity use from the existing power grid despite the requirement under mitigation measure AQ-1 which stipulates that “[e]lectricity shall be supplied to the site from the existing power grid to support the electric construction equipment.”⁵⁴ Electricity use from the existing power grid is not included or analyzed in the Project’s construction energy use analysis. As a result, the MND lacks substantial evidence to conclude that construction-phase impact related to energy consumption would be less than significant.⁵⁵

6

The City must revise the construction energy use analysis to include the expected electricity use and include the results of the analysis in an EIR.

D. The MND Fails to Account for the Public Services That Will Be Needed to Support the Project

An MND must consider the effect of changes to the environment that can result from the expansion of services.⁵⁶ Here, the MND states that the Project would not place an unanticipated burden on police protection services.⁵⁷ However, the MND fails to include any information or analysis on how this conclusion was reached.

7

⁵⁴ MND, p. 48.

⁵⁵ MND, p. 63.

⁵⁶ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553.

⁵⁷ MND, p. 116.

Additionally, the Project is within the Mission Hills-Panorama City-North Hills Community Plan (“Community Plan”) Area which includes goals and objectives to ensure proper police protection of new developments.⁵⁸ The Community Plan includes the following policies and related programs that are applicable to the Project:

- 8-2.2 Ensure that landscaping around buildings be placed so as not to impede visibility.
 - Program: Discretionary land use reviews and approvals by the Department of City Planning with consultation from the Los Angeles Police Department.
- 8-2.3 Ensure adequate lighting around residential, commercial, and industrial buildings in order to improve security.
 - Program: Discretionary land use reviews and approvals by the Department of City Planning with consultation from the Los Angeles Police Department.⁵⁹

Policies 8-2.2 and 8-2.3 both include a program requirement that consultation be completed with LAPD as part of a project’s land use review process in order to ensure the safety of the future occupants of a project, in this case children and teachers primarily. However, the MND does not include any analysis of the Project’s conformance with the Community Plan and provides no evidence that the required consultation has been completed. Instead, the MND states that the “Project would comply with all applicable regulations required by the LAPD during the plan check process.”⁶⁰

This approach improperly defers required analysis of the Project’s potential impacts to public services that may be uncovered during LAPD’s review of the Project and defers mitigation measures that may be required through consultation with LAPD. As a result, the MND fails to demonstrate consistency with mandatory public protection policies in the Community Plan, in violation of CEQA and land use law.

⁵⁸ City of Los Angeles, Mission Hills-Panorama City-North Hills Community Plan (1999) p. III-16, available at https://planning.lacity.org/odocument/fee68461-843f-48da-92e9-49a01d1f09e3/Mission_Hills-Panorama_City-North_Hills_Community_Plan.pdf

⁵⁹ Community Plan, p. III-16.

⁶⁰ MND, p. 116.
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7 cont.

For example, LAPD’s review of the project may find that additional lighting is necessary for the Project to protect the students and staff, this would in turn increase the Project’s energy use and GHG impacts. Similarly, consultation with LAPD may require alteration to the Project’s landscaping plan changing the number of protected trees and shrubs to be replaced resulting in nonconformance with the City’s tree protection policies.⁶¹ The MND is silent on these issues.

Given the massively significant impacts that crime, violence, and shootings at schools have wreaked on American children and their families in recent years, it is incumbent on the City to take every feasible step to ensure that schools are built safely and in compliance with all Police Department land use policies. The MND’s failure to demonstrate compliance with Policies 8-2.2 and 8-2.3 is inexcusable.

The City failed to proceed in the manner required by law by failing analyze consistency with the Community Plan’s public protection policies and lacks substantial evidence to support its conclusion that the Project’s public services impacts would be less than significant. The City must complete the required consultation with LAPD and analyze the environmental impacts of any required Project design changes to the Project in an EIR.

E. The MND Fails to Mitigate Potentially Significant Impacts to Protected Species and Failed to Consult with Responsible Wildlife Agencies

The MND states that the Project would result in the removal of 9 protected native trees and 32 non-protected significant trees.⁶² Eight of the protected trees to be removed are Southern California black walnut trees [*Juglans californica*] which are listed by the California Department of Fish and Wildlife in the California Natural Diversity Database (“CNDDDB”) on the Special Vascular Plants, Bryophytes, And Lichens List⁶³ and recognized by the United States Department of Agriculture as “severely threatened by urbanization. According to the USDA, the Nature Conservancy, in cooperation with the state of California, is giving high priority to acquiring vegetative/habitat data on the woodland and is listed as one of

⁶¹ “[P]rotected tree/shrub removals would be replaced at a 1:4 ratio by planting 36 trees on-site. Non-protected tree removals would be replaced at a 1:1 ratio by planting 32 trees on-site.” MND, p. 20

⁶² MND, p. 54.

⁶³ California Department of Fish and Wildlife, Biogeographic Data Branch, California Natural Diversity Database, Special Vascular Plants, Bryophytes, And Lichens List (October 2022) available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline> L6402-005j

7 cont.

8

California's rare and imperiled natural communities.⁶⁴ CDFW regularly provides comments on projects that deal with removal of South Coast black walnut. However, it is not clear whether the CDFW was consulted as a trustee agency for this Project.

Under CEQA, a project that affects the habitat of an endangered, rare, or threatened species is considered to be a project of statewide significance that requires state agency review of a CEQA document prepared for the project.⁶⁵ In addition, when preparing its CEQA document, the lead agency must consult with CDFW and obtain written findings from CDFW on the impact of the project on the continued existence of any State-listed endangered or threatened species.⁶⁶

The CDFW regularly provides substantive comments and recommendations to the City regarding the removal of South Coast black walnut trees. For example, a recent City of Los Angeles project, The James Street Four (4) Single-Family Residences, Case Number: ENV-2018-1130-MND⁶⁷, which required the removal of 11 Southern California Black Walnut trees did include consultation with the CDFW resulting in the following recommended mitigation measures:

- Mitigation Measure #2: CDFW recommends the City work with a certified arborist familiar with Southern California black walnut tree life history to update the Protected Tree Report and Tree Locations on Project Landscaping Plan for 434, 438, and 442 West James Street. Specifically, CDFW recommends modifying the plans to reflect a total of 20 replacement Southern California black walnut trees appropriately spaced to accommodate growth horizontally, vertically, and laterally below ground. CDFW also recommends that each landscaping plan and/or Protected Tree Report be updated to disclose/provide planting instructions specifying appropriate spacing between each replacement tree.⁶⁸

⁶⁴ U.S.D.A., Fire Effects Information System, Index of Species Information, *Juglans californica*, available at <https://www.fs.usda.gov/database/feis/plants/tree/jugcal/all.html>

⁶⁵ 14 CCR § 15206(b)(5). "A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and habitats for endangered, rare and threatened species as defined by Section 15380 of this Chapter."

⁶⁶ PRC § 21104.2.

⁶⁷ City of Los Angeles, James Street Four (4) Single-Family Residences MND, SCH 2020100088 (October 6, 2020) available at <https://ceqanet.opr.ca.gov/2020100088/2>

⁶⁸ California Department of Fish and Wildlife, Letter re James Street Four (4) Single-Family Residences, MND, SCH #2020100088, City of Los Angeles, Los Angeles County (November 9, 2020) p. 3. available at https://files.ceqanet.opr.ca.gov/265078-2/attachment/cjEnN_Le0w7OINF2hj_LUpxXODG-Af32QhutP1XGnwh8DFEvrYIvXncLOILCv5RJD4GRhuEoXopL13p0L6402-005j

- Mitigation Measure #3: CDFW recommends that trees planted for mitigation be monitored, maintained, and inspected as described in the Protected Tree Report. CDFW recommends long-term monitoring, maintenance, and inspection until all planted trees survive to produce reproductive structures (i.e., catkins).⁶⁹
- Mitigation Measure #4: If the City observes changes, stress, or failure of planted Southern California black walnut trees, as recommended in the Protected Tree Report, CDFW recommends consulting with a certified arborist or tree specialist to assess the tree and provide specific recommendations. There should be no net loss of Southern California black walnut trees. If any replacement trees fail, CDFW recommends City replace those trees until a minimum of 20 total trees survive to produce catkins.⁷⁰

8 cont.

The City failed to submit the MND to the State Clearinghouse (“SCH”) and consult with CDFW as a trustee agency, as required under CEQA. When questioned by the California Office of Planning and Research why the Project was not submitted to the SCH, the City’s internal email exchange shows that they determined that the Project was not affected by CCR §§ 15205 and 15206.⁷¹ The City has violated CEQA by failing to submit the MND to the SCH and failing to consult with CDFW.

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

A. The City Cannot Approve the Project’s Conditional Use Permit

The Project seeks approval of a Conditional Use Permit to allow development of a public school in the RA-1 zone (“CUP”) pursuant to LAMC § 12.24.⁷² The MND fails to accurately disclose and mitigate significant impacts, as discussed herein. Therefore, the Project currently fails to meet the LAMC requirements to obtain a CUP. LAMC § 12.24(E) requires the following findings be made to approve the CUP:

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- (1) that the project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city, or region;

⁶⁹ *Id.*, at p. 4

⁷⁰ *Ibid.*

⁷¹ Exhibit C: Email from Maria Reyes, City of Los Angeles to Esther Ahn, City of Los Angeles, re: SCH Number (New SCH Number), (November 22, 2022).

⁷² LAMC § 12.24(U)(24).
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- (2) that the project's location, size, height, operations, and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety; and
- (3) that the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan.

9 cont.

The Project as analyzed above **will** adversely affect public health due to the Project's proximity to I-405 and the unmitigated impacts to future students and school staff, **will** adversely affect adjacent properties due to unmitigated noise impacts and, and **does not** comply with the applicable community plan by failing to consult with LAPD prior to Project approval.

Additionally, the MND's analysis of air quality ignores substantial evidence that the Census Tract 6037117201, which contains the Project site, is a designated disadvantaged community under Senate Bill 535.⁷³

Census tract 6037117201 is in the top 10th percentile of communities impacted by diesel particulate matter, the top 6th percentile of communities impacted by traffic, and the top 5th percentile of communities impacted by ozone in the State of California.⁷⁴ The City must reanalyze the air quality and health risk impacts of the Project and consider the public well-being of this already burdened community in an EIR. Given the Project's location in a region with one of the nation's worst records for air quality, in a disadvantaged community already overly burdened by exposure to harmful air contaminants, it is impossible to find that the Project is consistent with the Municipal Code. The Project cannot be found to not adversely affect the public health, welfare and safety of students and staff present at the Project site. The City must prepare an EIR that includes a statement of overriding considerations to justify the use of the Project site.

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⁷³ California Office of Environmental Health Hazard Assessment, SB 535 Disadvantaged Communities (2022) available at <https://oehha.ca.gov/calenviroscreen/sb535>

⁷⁴ Clark Comments, p. 4.
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V. CONCLUSION

For the reasons discussed above, the MND for the Project remains wholly inadequate under CEQA. There is substantial evidence supporting a fair argument that the Project has numerous potentially significant, unmitigated impacts. The City must prepare and circulate an EIR to provide legally adequate analysis of, and mitigation for, all of the Project's potentially significant impacts. Until the City prepares an EIR, the City may not lawfully approve the Project.

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Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,



Kevin Carmichael

KTC:ljl