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February 21, 2022 **3**

VIA EMAIL

Commission President Millman and Commission Members
City Planning Commission

Email: cpc@lacity.org

Esther Ahn, Planner

Email: esther.ahn@lacity.org

Re: Agenda Item 7: - Valor Elementary School Project, Case No. CPC-2022-5865-CU-SPR, CEQA No. ENV-2022-5866-MND

Dear Commission President Millman, Commission Members, and Ms. Ahn:

This letter is submitted on behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”) regarding Agenda Item 7, the Valor Elementary School Project, Case No. CPC-2022-5865-CU-SPR, CEQA No. ENV-2022-5866-MND (“project”) proposed by Bright Star Schools (“Applicant”).

On December 14, 2022, CREED LA submitted comments to the Department of Planning on the Mitigated Negative Declaration¹ (“MND”) prepared for the Project pursuant to the California Environmental Quality Act (“CEQA”)² by the City of Los Angeles (“City”). Our comments explained that the City failed to comply with CEQA by failing to accurately disclose the extent of the Project’s potentially significant impacts on air quality, public health, hazards, public services, and noise, and that there is more than a fair argument that the Project will result in significant, unmitigated impacts in each of these areas.

On February 15, 2023 the City released a Recommendation Report for the Project which contains responses to our comments from Planning Department staff

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.* L6420-010j

and the Applicant’s consultant, Rincon Consultants Inc.³ The City’s responses fail to resolve the majority of issues raised in CREED LA’s MND comments. This letter addresses the responses to comments contained in the Recommendation Report and Rincon Report. Air quality and hazards expert James Clark, Ph.D and noise expert Ani Toncheva also provided responses to the Recommendation Report, attached to this letter as Attachments A and B respectively.⁴ In sum, these comments show that the City does not provide substantial evidence to justify reliance on an MND, that substantial evidence remains in the record demonstrating that the Project has significant, unmitigated impacts, and the Planning Commission cannot make the findings required to approve the Project under the City’s municipal code.⁵

For the reasons discussed in our herein, in our previous letter, and the attached expert comments, CREED LA urges the Commission to remand the Project to staff so that they can correct the deficiencies in the MND by preparing a legally adequate EIR and recirculating it for public review and comment before the Project can be considered for approval.⁶

A. The City Must Prepare a Preliminary Endangerment Assessment Pursuant to the California Education Code.

In our comments on the MND, we noted that the City failed to consult with the Department of Toxic Substances Control (“DTSC”) and prepare a Preliminary Endangerment Assessment (“PEA”) for the Project. In response, the City states that the California Education Code section 47610 exempts charter schools from many provisions of the Education Code including the requirement to consult with DTSC.⁷ However, when a charter school receives funds from the state to construct or improve its buildings under the Charter School Facilities Program (“CSFP”), the

³ Department of City Planning, Recommendation Report, Valor Elementary School Final IS-MND (ENV-202205866-MND) (February 23, 2023) available at https://planning.lacity.org/plndoc/Staff_Reports/2023/02-23-2023/CPC_2022_5865.pdf; see also Exhibit E, Rincon Consultants, Responses to CREED LA Comment Letter Dated December 14, 2022 (February 9, 2023) (hereinafter “Rincon”) beginning at pdf. p. 239.

⁴ **Attachment A:** Comments on Valor Elementary School Project (February 20, 2023) (“Clark Comments”); **Attachment B:** Comments on Valor Elementary School Project Responses (February 21, 2023) (“Wilson Ihrig Comments”).

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

⁶ 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.

⁷ Rincon, Response 4.1, p. 3.
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school is subject to additional requirements, including the requirements to consult with DTSC.

The CSFP was enacted in 2002 by Assembly Bill 14, amended by Senate Bill 15 and Assembly Bill 16, and funded through Proposition 47, Proposition 55, Proposition 1D, and Proposition 51, for the purposes of constructing, acquiring, or renovating new facilities for site-based charter school students throughout California.⁸ The CSFP is codified in Education Code Chapter 12.5 section 17078.52.⁹ The CSFP allows charter schools to access state facility funding for new construction directly or through the school district where the charter school is physically located. The program funds 50 percent of project costs as a grant (paid by the State), while the charter school, in the form of a long-term lease or a lump sum payment, repays the remaining 50 percent.¹⁰

As a condition of receiving state funding pursuant to Chapter 12.5, a charter school must complete the three-step process outlined in Education Code § 17213.1 and assess whether there has been a release of hazardous waste at a school site.¹¹ As explained in our prior comments, process requires consultation with 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.¹²

Bright Star Schools' 2022-2023 budget audit report states that it received Proposition 1D grants which are categorized as "Proposition Construction Revenue" in the budget.¹³ Based on the Audit Report it appears that Bright Star Schools intends to use the funds from the Proposition 1D grants to fund school construction projects such as the Project here, noting that \$26,971,711 in assets are restricted for construction.¹⁴ Because the funds are made available through Education Code Chapter 12.5, then, in order to use these funds for Project construction, Bright Star Schools is required to comply with Education Code § 17213.1 and consult with DTSC regarding the Project's potential health risks to students.

⁸ California State Treasurer's Office, School Finance Authority, Charter School Facilities Program Overview (2023) ("STO Overview") available at <https://www.treasurer.ca.gov/csfa/charter.asp>

⁹ Ed. Code, § 17078.52.

¹⁰ STO Overview (2023).

¹¹ Ed. Code §17213.1 *see also* DTSC, Environmental Assessments For Charter School Sites Fact Sheet available at <https://dtsc.ca.gov/environmental-assessments-for-charter-school-sites-fact-sheet/>

¹² Ed. Code §17213.1(a)(4)(B).

¹³ Bright Star Schools, 2022-2023 Budget Report on the Financial Statement ("Auditor's Report") (June 30, 2022) p. 11. Available at https://brightstarschools.org/files/galleries/2022_Audited_Financials.pdf

¹⁴ Auditor's Report, p. 7.
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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 Planning Commission must continue the hearing until consultation with DTSC is completed, and prepare and circulate a revised CEQA document which includes the results of the consultation and any subsequent PEA prepared for the Project.

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

As explained in our initial comments and herein, the City failed to analyze the background risk from air pollution in the Project area. Development of the Project will place children and staff in an area of high air pollution concentrations. In his review of the Recommendation Report and Responses, Dr. Clark found that the cumulative cancer risk from air pollutants in the area of the project is 413 in 1,000,000.¹⁵ Diesel particulate matter (“DPM”) accounts for approximately 65 percent of that risk or 268 in 1,000,000, while the 145 in 1,000,000 comes from benzene, formaldehyde and other gasses which will not be treated with the MERV filters.¹⁶ Assuming that the MERV 13 filters at the site reduce the cancer risk from DPM by 90 percent, the cumulative risk to students and staff will still exceed the SCAQMD threshold of 100 in 1,000,000, resulting in a significant impact. The Responses fail to include additional mitigation such as measures requiring the Project to minimize the amount of time the students spend outside to limit exposure. The City must prepare an EIR which includes additional mitigation measures to protect students and staff or contain the findings necessary to justify a statement of overriding considerations if the risk cannot be mitigated to below the threshold.

C. There is Substantial Evidence Supporting a Fair Argument That the Project Will Result in Significant, Unmitigated Noise Impacts

We previously commented that the long term noise measurement taken for the Project failed to document the changes in the noise environment that occur through the day because the measurement was taken at the back of the Project site where it is partially shielded from both nearby streets and does not capture traffic

¹⁵ Clark Letter, p. 1.

¹⁶ Clark Letter, p. 2.
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patterns at residences close to Plummer Street. The City's Response 5.1 states that this was done on purpose and results in a more conservative analysis to measure project noise against.¹⁷ However, Ms. Toncheva found that the long-term measurement location still fails to adequately document the existing noise impacts to all sensitive receptor locations nearby the Project site, including those along Plummer Street, adjacent to the Project site. Additional measurement and analysis is required to characterize the existing noise environment at the Project site.

Additionally, the City provides new information regarding the Project's operational noise, stating that the Project will not employ bells or an outdoor paging system.¹⁸ However, the City failed to quantify the Project's operational noise and therefore lacks substantial evidence to conclude that the Project will not have a significant impact. Furthermore, Ms. Toncheva found that, while the Project buildings will shield receptors to the west and south, the residence to the east of the site is not shielded and may be exposed to reflections of Project noise.¹⁹

Ms. Toncheva concludes that the Project's construction and operational noise impacts remain significant and unmitigated notwithstanding the mitigation measures proposed in the MND and the Project's conditions of approval. Ms. Toncheva's comments provide substantial evidence supporting a fair argument that an EIR is required to accurately disclose and mitigate these impacts.

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

The Responses fail to address whether consultation with LAPD will result in changes to the Project design or require additional police services to support the Project. An MND must consider the effect of changes to the environment that can result from the expansion of services.²⁰ Here, the MND states that the Project would not place an unanticipated burden on police protection services.²¹ However, the MND and responses fail to include any information or analysis on how this conclusion was reached.

As detailed in our previous comments, the City failed to proceed in the manner required by law by failing to analyze consistency with the Community Plan's public protection policies and lacks substantial evidence to support its conclusion

¹⁷ Rincon, p. 8.

¹⁸ Recommendation Report, p. C-6.

¹⁹ Wilson Ihrig, p. 2.

²⁰ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553.

²¹ MND, p. 116.

that the Project's public services impacts would be less than significant. The responses fail to meaningfully respond to CREED LA's prior comments. 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.

II. 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 § 12.24.²² The MND fails to accurately disclose and mitigate significant impacts, as discussed herein. Therefore, the Project fails to meet the LAMC requirements to obtain a CUP. LAMC § 12.24(E)(2) and (3) require "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 that the Project "conforms with the purpose, intent and provisions of the General Plan, the applicable community plan". 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** conform with the applicable community plan by failing to consult with LAPD prior to Project approval.

III. CONCLUSION

For the reasons stated herein and in our prior comments and the comments of CREED LA's experts, CREED LA respectfully requests that the City Planning Commission remand the Project to staff and direct staff to prepare an EIR for the Project.

Sincerely,



Kevin Carmichael

KTC:ljl

²² LAMC § 12.24(U)(24).
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