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March 16, 2023

Via Email and Electronic Submission through Online Portal

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City of Los Angeles
C/o Appeals Clerk
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Los Angeles, CA 90012
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Esther Ahn, City Planner
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Via Online Portal:
<https://plncts.lacity.org/oas>

Re: Appeal to the Los Angeles City Council of the March 2, 2023, City Planning Commission Determination in the Valor Elementary School Project CPC-2022-5865-CU-SPR; ENV-2022-5866-MND

Dear Honorable Mayor Bass, City Council Members and Ms. Ahn:

On behalf of **Coalition for Responsible Equitable Economic Development (“CREED LA”)** we are writing to appeal the City Planning Commission’s March 2, 2023 determination approving the Conditional Use Permit (“CUP”) and Site Plan Review (“SPR”) for the Valor Elementary School Project, CPC-2022-5865-CU-SPR; ENV-2022-5866-MND (“Project”), including the City Planning Commission’s adoption of the Project’s Mitigated Negative Declaration (“MND”), and adopting Conditions of Approval.¹

¹ City of Los Angeles, Letter of Determination, 15526 and 15544 West Plummer Street, Case No. CPC-2022-5865-CU-SPR (March 2, 2023) available at <https://planning.lacity.org/pdiscaseinfo/document/MjI1MQ0/fe3b456d-e5a5-4f0e-9fa7-879f1ff43502/pdd>
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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.² 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.

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.

Pursuant to the City of Los Angeles (“City”) appeal procedures, we have provided an electronic copy of this Justification for Appeal letter, the Appeal Application (Form CP-7769), and the original Determination Letter. We have also paid the required appeal fee of \$158 via the Department of City Planning Online Application Portal.

The reasons for this appeal include that the City Planning Commission abused its discretion and violated the California Environmental Quality Act (“CEQA”) when it approved the Project’s CUP and SPR for the Project, and in adopting the MND, Findings, and Modified Conditions of Approval in violation of CEQA and land use laws. CEQA requires that the potential impacts of this Project be evaluated in an environmental impact report (“EIR”), not in an MND, because substantial evidence exists that the Project may have significant, unmitigated environmental impacts to public health, noise, and public safety that are not adequately disclosed or mitigated by the MND.

² MND, p .1.
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Our December 14, 2022, and February 21, 2023, comment letters on the Project are attached hereto and incorporated by reference.³ The specific reasons for this appeal are set forth in detail in those letters and summarized below. In short, substantial evidence supports a fair argument that that Project will cause: (1) a significant, unmitigated cancer risk from air pollution emissions to future students and staff, (2) a significant, unmitigated impact from noise, and (3) a potentially significant, unmitigated impact to public safety. Additionally, the City failed to consult with the Department of Toxic Substances Control and prepare a preliminary endangerment assessment in violation of California law.

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

³ See **Exhibit 1**: Letter from Kevin Carmichael to Esther Ahn re Comments on the Mitigated Negative Declaration for the Valor Elementary School Project (ENV-2022-5866-MND) (December 14, 2022); and **Exhibit 2**: Letter from Kevin Carmichael to Los Angeles City Planning Commission re: Agenda Item 7: Valor Elementary School Project, Case No. CPC-2022-5865-CU-SPR, CEQA No. ENV-2022-5866-MND (February 21, 2023).
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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. REASONS FOR APPEAL

A. **There is Substantial Evidence Demonstrating that the Project May Cause a Significant, Unmitigated Cancer Risk from Exposure to Air Pollution**

The MND concludes that the health risk posed to future students and staff at the Project site from exposure to high air pollution concentrations, including diesel particulate matter (“DPM”) emissions, would be less than significant. We previously explained that the MND’s conclusion is unsupported and that the City failed to analyze the background risk from air pollution in the Project area.

Substantial evidence supports a fair argument that development of the Project will place children and staff in an area of high air pollution concentrations. CREED LA’s expert, Dr. James Clark, found that the cumulative cancer risk from air pollutants in the area of the Project is 413 in 1,000,000. 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 proposed as mitigation for the Project. Assuming that the MERV 13 filters at the site would 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 City must prepare an EIR that includes disclosure and analysis of the potentially significant health risk impacts to future students and staff at the Project site and require additional mitigation to reduce the Project’s health risks from air pollution.

B. The City Failed to Perform a Preliminary Endangerment Assessment

CREED LA previously presented substantial evidence supporting a fair argument that the City is required to consult with the Department of Toxic Substances Control (“DTSC”) and prepare a Preliminary Endangerment Assessment for the Project. The Applicant failed to comply with this requirement, and the City Planning Commission failed to require the Applicant to provide evidence demonstrating compliance. As a result, the Project fails to comply with both the Education Code and CEQA because the Project may result in significant, unmitigated health risk to students and teachers.⁴

As a condition of receiving state funding for school construction projects pursuant to California Education Code Chapter 12.5 section 17078.52, 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.⁵ As explained in our prior comments, the 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.⁶

The Applicant asserts that consultation with DTSC is not required because no Charter Schools Facilities Program (“CSFP”) funds would be used for the construction of the Project⁷, despite the fact that the Applicant’s 2022-2023 operational budget includes a line item for Proposition 1D grants to fund school construction projects, noting that \$26,971,711 in assets are restricted for construction.⁸ The Applicant must provide a guarantee that no State funds will be used for Project construction, otherwise, the City must conduct the necessary consultation with DTSC prior to Project approval.

⁴ PRC § 21002.1(c) (projects must comply with other laws).

⁵ Ed. Code, §§ 17078.52 and 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/>

⁶ Ed. Code §17213.1(a)(4)(B).

⁷ City Planning Commission, February 23, 2023, Agenda Item 7, Day of Submissions, pdf. p. 66 available at <https://planning.lacity.org/dcpapi/meetings/document/addtldoc/64833>

⁸ Bright Star Schools, 2022-2023 Budget Report on the Financial Statement (“Auditor’s Report”) (June 30, 2022) pp. 7 and 11. Available at https://brightstarschools.org/files/galleries/2022_Audited_Financials.pdf

C. The Project May Result in a Significant, Unmitigated Impact from Noise

We previously provided substantial evidence showing the MND's failure to provide an adequate baseline noise analysis, resulting in a failure to disclose the noise impacts from construction and operation of the Project. This remains a significant, unmitigated impact that the City has failed to disclose.

Additionally, CREED LA's experts determined 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. The City failed to resolve these issues before the City Planning Commission approved the Project.

D. The Project May Result in a Significant, Unmitigated Public Safety Impact

We previously provided substantial evidence showing the City failed to proceed in the manner required by law by failing to analyze consistency with the Mission Hills-Panorama City-North Hills 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. In particular, the City failed to analyze whether consultation with LAPD regarding the Project's design and layout will result in changes to the Project design or require additional police services to support the Project. A CEQA document must consider the effect of changes to the environment that can result from the expansion of services.⁹ The City Planning Commission failed to require this analysis before approving the Project. The City Council must correct this error by requiring an EIR for the Project.

E. The City Planning Commission Erred in Making the Required Findings to Approve the Project

The Project requires a CUP to allow development of a public school in the RA-1 zone pursuant to LAMC § 12.24.¹⁰ The MND fails to accurately disclose and mitigate significant impacts, as discussed in our comments to the City. Therefore,

⁹ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553.

¹⁰ LAMC § 12.24(U)(24).
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the Project fails to meet the LAMC requirements to obtain a CUP. LAMC § 12.24(E) requires the following findings be made to approve the CUP:

- (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;
- (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.

CREED LA demonstrated that the Project **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.

The City Planning Commission abused its discretion by making Finding No. Two and approving the Project despite substantial evidence in the record supporting a fair argument that the Project would adversely affect the surrounding neighborhood and affect public health, welfare, and safety.

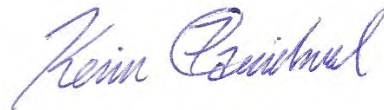
III. CONCLUSION

As a result of these errors, the City Planning Commission's adoption of the MND, Findings, and Modified Conditions of Approval, and its approval of the Project's Conditional Use Permit and Site Plan Review violated CEQA and must be overturned.

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We urge the City Council to grant CREED LA's appeal and order the preparation of an EIR for the Project. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Kevin Carmichael". The signature is written in a cursive style with a large, prominent "K" and "C".

Kevin Carmichael

KTC:lj1