

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062
dkey@adamsbroadwell.com

SACRAMENTO OFFICE

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

TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

*Not admitted in California.
Licensed in Colorado.

January 5, 2021 2022

VIA EMAIL AND OVERNIGHT MAIL

Polonia Majas, Planner
Vince Bertoni, Director of Planning
City of Los Angeles
Department of City Planning
221 N. Figueroa St., Suite 1350
Los Angeles, CA. 90012
Email: polonia.majas@lacity.org;
vince.bertoni@lacity.org

**Re: Comments on the Draft Environmental Impact Report for the
8th, Grand and Hope Project (SCH No. 2019050010,
Environmental Case No. ENV-2017-506-EIR)**

Dear Ms. Majas:

On behalf of Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA"), we submit these comments on the Draft Environmental Impact Report ("DEIR") for the 8th, Grand and Hope Project (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) ("Project"), proposed by Mitsui Fudosan America ("Applicant"), and prepared pursuant to the California Environmental Quality Act ("CEQA")¹ by the City of Los Angeles ("the City").

The Project proposes to construct a 50-story mixed-use development comprised of 580 residential units and up to 7,499 square feet of ground floor commercial/retail/restaurant space on a 34,679-square-foot site. The Project would be located at 754 S. Hope Street and 609 and 625 W. 8th Street in the City of Los Angeles, California (Assessor's Parcel Numbers 5144-011-009 and 5144-011-016).

Our review of the DEIR demonstrates that the DEIR fails to comply with CEQA. As explained more fully below, the DEIR fails to accurately disclose the

¹ Public Resources Code § 21000 *et seq.*; 14 Cal. Code Regs. ("C.C.R.") §§ 15000 *et seq.* L5887-004acp

January 5, 2022

Page 2

extent of the Project's potentially significant impacts on air quality, public health, noise, and greenhouse gas ("GHG") emissions. The DEIR fails to support its significance findings with substantial evidence, and fails to mitigate the Project's significant impacts to the greatest extent feasible, in violation of CEQA. As a result of these deficiencies, the City also cannot make the requisite findings to approve the Project under the City's municipal codes or to adopt a statement of overriding considerations pursuant to CEQA.²

These comments were prepared with the assistance of environmental health, air quality, and GHG expert Dr. James Clark, Ph.D., and noise expert Derek Watry of Wilson Ihrig. Comments and curriculum vitae of Mr. Clark are attached to this letter as Attachment A.³ Mr. Watry's comments and curriculum vitae are included as Attachment B.⁴ 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 DEIR by preparing a legally adequate revised DEIR and recirculating it for public review and comment.⁵

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 proceeds 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

² Pub. Res. Code § 21081; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

³ Attachment A: Comments on 8th, Grand and Hope Project (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (Jan. 5, 2022) ("Clark Comments").

⁴ Attachment B: 8th, Grand and Hope Project (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (Jan. 5, 2022), Comments on Noise Section by Wilson Ihrig ("Watry Comments").

⁵ 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.

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 include John Ferruccio, Gery Kennon, and Chris S. Macias. These individuals 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 medical office 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. LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.⁶ The EIR is a critical informational document, the "heart of CEQA."⁷ "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the

⁶ Public Resources Code § 21100.

⁷ *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 944 (citation omitted).
L5887-004acp

fullest possible protection to the environment within the reasonable scope of the statutory language.”⁸

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.⁹ “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.’”¹⁰ 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.”¹¹ 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.”¹²

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.¹³ The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”¹⁴ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment” to

⁸ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 (internal quotations omitted).

⁹ Public Resources Code § 21061; 14 C.C.R. §§ 15002(a)(1); 15003(b)–(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 (“[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”).

¹⁰ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, quoting *Laurel Heights*, 47 Cal.3d at 392.

¹¹ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; see also *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”) (purpose of EIR is to inform the public and officials of environmental consequences of their decisions *before* they are made).

¹² 14 C.C.R. § 15003(b).

¹³ 14 C.C.R. § 15002(a)(2), (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

¹⁴ 14 C.C.R. § 15002(a)(2).

the greatest extent feasible and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”¹⁵

While courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. *A clearly inadequate or unsupported study is entitled to no judicial deference.*”¹⁶ As the courts have explained, a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.”¹⁷ “The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail ‘to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”¹⁸

III. THE EIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS

A. The DEIR Fails to Disclose and Analyze the Health Risk Posed by the Project’s Air Emissions from Construction and Operation

The DEIR fails to disclose and analyze health risks from construction emissions and lacks a quantified health risk analysis (“HRA”), in violation of CEQA.

¹⁵ Public Resources Code § 21081(a)(3), (b); 14 C.C.R. §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

¹⁶ *Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added), quoting *Laurel Heights*, 47 Cal.3d at 391, 409, fn. 12.

¹⁷ *Berkeley Jets*, 91 Cal.App.4th at 1355; see also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).

¹⁸ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, quoting *Laurel Heights*, 47 Cal.3d at 405.

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."¹⁹ In particular, 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."²⁰

Courts have held that an environmental review document must disclose a project's potential health risks to a degree of specificity that would allow the public to make the correlation between the project's impacts and adverse effects to human health.²¹ In *Bakersfield*, the court found that the EIRs' description of health risks were insufficient and that after reading them, "the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin."²² Likewise in *Sierra Club*, the Supreme Court held that the EIR's discussion of health impacts associated with exposure to the named pollutants was too general and the failure of the EIR to indicate the concentrations at which each pollutant would trigger the identified symptoms rendered the report inadequate.²³ Some connection between air quality impacts and their direct, adverse effects on human health must be made. 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."²⁴ CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.²⁵

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.²⁶ 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

¹⁹ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

²⁰ *Id.* at 518.

²¹ *Id.* at 518–520; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

²² *Id.* at 1220.

²³ *Sierra Club*, at 521.

²⁴ *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

²⁵ *Sierra Club*, 6 Cal.5th at 518–522.

²⁶ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

L5887-004acp

to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.²⁷ Courts reviewing challenges to an agency's approval of a CEQA document based on a lack of substantial evidence will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."²⁸

The DEIR claims that emissions of toxic air contaminants ("TACs") will be less than significant without including a detailed or quantitative HRA to disclose the adverse health impacts that will be caused by exposure to TACs from the Project's construction and operational emissions. As a result, the DEIR fails to disclose the potentially significant health risk posed to nearby residents and children from TACs, and fails to mitigate it. Because the DEIR fails to include the necessary analysis disclosing the extent and severity of the Project's health risk, and fails to compare the Project's TAC emissions to applicable significance thresholds, the DEIR lacks substantial evidence to support its conclusion that the Project will not have significant health impacts from human exposure to diesel particulate matter ("DPM") emissions generated during Project construction and operation.

One of the primary emissions of concern regarding health effects for land development projects is DPM, which can be released during Project construction and operation. However, the DEIR failed to perform a quantitative assessment of the Project's DPM emissions, instead concluding that the Project's cancer risk from exposure to DPM would be less than significant based on the DEIR's conclusion that the Project's *criteria pollutant* emissions are less than significant.²⁹

The DEIR's failure to quantify the health risk from DPM exposure is a failure to proceed in the manner required by law. CEQA expressly requires that an EIR discuss, *inter alia*, "health and safety problems caused by the physical changes" resulting from the project.³⁰ When a project results in exposure to toxic

²⁷ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

²⁸ *Id.* (internal quotations omitted).

²⁹ Clark Comments, pp. 4-5.; DEIR, p. IV.A-45.

³⁰ 14 C.C.R. § 15126.2(a).

contaminants, this analysis requires a “human health risk assessment.”³¹ OEHHA³² guidance also sets a recommended threshold for preparing an HRA of a construction period of two months or more.³³ Construction of the instant Project will last at least 36 months, as the DEIR puts forth a timeline for construction of 2022 through 2025.³⁴ A detailed health risk analysis is necessary to determine how significant those impacts will be and if mitigation measures are sufficient to avoid risks to public health.

1. The DEIR Fails to Evaluate the Project’s TAC Emissions Against Applicable Significance Thresholds.

The DEIR relies on the South Coast Air Quality Management District’s (“SCAQMD”) cancer risk significance thresholds for TACs to evaluate the Project’s health risk, which includes the following:

Maximum incremental cancer risk 10 in 1 million
Cancer Burden >0.5 excess cancer cases (in areas ≥ 1 in 1 million)
Chronic and acute hazard index 1.0 (project increment).³⁵

SCAQMD Rule 1401 health risk thresholds apply to operational impacts from the Project’s diesel backup generator (“BUG”). Those thresholds provide that permits to operate may not be issued when emissions of TACs result in a maximum incremental cancer risk greater than 1 in 1 million without application of best available control technology for toxics (“T-BACT”), or a maximum incremental cancer risk greater than 10 in 1 million with the application of T-BACT, or if the cumulative cancer burden (i.e., increase in cancer cases in the population) from all

³¹ *Sierra Club*, 6 Cal.5th at 520; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344, 1369; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219–1220 (CEQA requires that there must be some analysis of the correlation between the project’s emissions and human health impacts).

³² OEHHA is the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. See OEHHA organization description, available at <http://oehha.ca.gov/about/program.html>.

³³ See “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/hotspots2015.html (“OEHHA Guidance”), p. 8-18.

³⁴ DEIR, p. IV.A-52

³⁵ See DEIR Table IV.A-3 (SCAQMD Air Quality Significance Thresholds).
L5887-004acp

TACs emitted from a single piece of equipment exceeds 0.5, or a health hazard index (chronic and acute) greater than 1.0.³⁶

The DEIR concludes that Project construction “would not result in any substantial emissions of acute or chronic TACs during construction activities,”³⁷ and regarding Project operation, concludes that “the proposed project would not release substantial TACs.”³⁸ However, as discussed above, the DEIR failed to quantify the Project’s DPM emissions from construction or operation.³⁹ The City also failed to perform the necessary step of comparing the Project’s DPM emissions to the applicable significance thresholds to determine whether or not they exceed the thresholds, nor could it have because the DEIR lacks the emissions calculations with which to do so. The City, therefore, lacks any quantitative evidence demonstrating that the Project’s DPM emissions will not exceed thresholds.

The DEIR also fails to address that the Applicant would be required to work with the SCAQMD to obtain permits to operate for the BUG, and does not address any of SCAQMD’s future analysis to determine whether or not the BUG poses a significant health risk.⁴⁰ This approach is prohibited by CEQA. The lead agency may not completely defer analysis of potential environmental impacts to an outside regulatory scheme, as the City has done here.⁴¹

The DEIR must be revised and recirculated to accurately analyze the health risks from the Project, determine whether they exceed the applicable SCAQMD significance thresholds, and to incorporate binding mitigation to reduce potentially significant health risk impacts to less than significant levels.⁴²

³⁶ See DEIR Table IV.A-3 (SCAQMD Air Quality Significance Thresholds).

³⁷ DEIR, p. IV.A-57.

³⁸ DEIR, p. IV.A-61.

³⁹ The DEIR includes an assumption that the BUG will operate 12 hours/year for testing, but did not quantify any other operational use of the BUG, or any other operational emissions that may result in TAC emissions.

⁴⁰ DEIR IV.A.

⁴¹ See *Californians for Alternatives to Toxics v. Dep’t of Food & Agric.* (2005) 38 Cal. Rptr. 3d 638, 648; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881–882 (court rejected assertion that noise level under proposed project would be insignificant simply by virtue of being consistent with general plan standards for zone in question).

⁴² *Sierra Club*, 6 Cal.5th at 520.

2. The DEIR's Analysis of Emissions From the On-Site Back Up Generator Ignores Substantial Emissions that Are Reasonably Likely to Occur From Non-Testing Operational Periods

The DEIR's analysis of the air quality impacts from the BUG makes two improper assumptions. First, it assumes the BUG will be maintained and tested for no more than 12 hours per year even though SCAQMD permits up to 200 hours of testing per year.⁴³ As Dr. Clark explains, the "City's assumption that the BUG would operate at a substantially reduced rate ignores the legally acceptable threshold outlined in SCAQMD Rule 1470."⁴⁴ The City has therefore failed to properly measure the potential impact of DPM emissions from the BUG on the receptors nearby, and from BUG emissions of NOx. Thus, the DEIR's conclusion that there will be less than significant impacts from the BUG is unsupported.

Secondly, the DEIR fails to analyze all uses that stem from the reasonably foreseeable increase of generator use during Public Safety Power Shutoff ("PSPS") events and extreme heat events ("EHEs"). The recent rise of Extreme Heat Events in the State has increased the amount of PSPS events and thus increased the amount of time generators are being run.⁴⁵

Dr. Clark explains that EHEs "are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit."⁴⁶ In 2021 alone, the Governor released one Executive Order regarding EHEs and one Proclamation for a State of Emergency with the intention to help avoid PSPS events.⁴⁷ CARB notes though that the number of Extreme Heat Events is likely to

⁴³ SCAQMD Rule 1407.

⁴⁴ Clark Comments, p. 6.

⁴⁵ SCAQMD. 2020. Proposed Amendment To Rules (PARS) 1110.2, 1470, and 1472. Dated December 10, 2020. http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2_1470_1472/par1110-2_1470_wgm_121020.pdf?sfvrsn=6.

⁴⁶ Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021; Clark Comments, pp. 6-7.

⁴⁷ Cal. Governor Executive Order N-11-21, <https://www.gov.ca.gov/wp-content/uploads/2021/07/EO-N-11-21-Extreme-Heat-Event-07.10.21.pdf>; Cal. Governor Proclamation of a State of Emergency, June 16, 2021, <https://www.gov.ca.gov/wp-content/uploads/2021/06/6.17.21-Extreme-Heat-proclamation.pdf>.

increase, and thereby PSPS events, with the continuing change in climate that the State is currently undergoing.⁴⁸

According to the California Public Utilities Commission (“CPUC”) de-energization report⁴⁹ in October 2019, there were almost 806 PSPS events that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers, and the rest were commercial/industrial/medical baseline/other customers. CARB’s data also indicated that on average each of these customers had about 43 hours of power outage in October 2019.⁵⁰ Dr. Clark notes that CARB concluded that PSPS events in October of 2019 alone generated 126 tons of NOx, 8.3 tons of particulate matter, and 8.3 tons of DPM.⁵¹

Dr. Clark concludes that “power produced [from generators] during PSPS or extreme heat events is expected to come from [diesel] engines” and would result in increased DPM that the DEIR did not analyze.

While the City is not required to analyze the worst case scenarios, there is substantial evidence demonstrating that PSPS events and EHE are reasonably foreseeable events which will require the use of the BUG beyond mere testing operations. A detailed analysis of the emissions and noise from these additional hours of BUG operation should be included in a revised EIR, including the extra time the BUG will need to run to account for EHEs and PSPS.

B. The DEIR Fails to Accurately Disclose and Mitigate Significant GHG Impacts

CEQA requires the lead agency to use scientific data to evaluate GHG impacts directly and indirectly associated with a project.⁵² The analysis must

⁴⁸ CARB 2017 Scoping Plan, p. 6,

https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf

⁴⁹ <https://www.cpuc.ca.gov/deenergization/> as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.

⁵⁰ CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.

⁵¹ Clark Comments p. 7.

⁵² See 14 C.C.R. § 15064.4(a) (lead agencies “shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project); 14 C.C.R. § 15064(d) (evaluating significance of the L5887-004acp

“reasonably reflect evolving scientific knowledge and state regulatory schemes.”⁵³ In determining the significance of GHG emissions impacts, the agency must consider the extent to which the project may increase GHG emissions compared to the existing environmental setting and the “extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.”⁵⁴

The DEIR claims that GHG emissions impacts will be less than significant because the Project is consistent with the LA Green New Deal, the 2008 Climate Change Scoping Plan, and the 2020-2045 RTP/SCS.⁵⁵ Specifically, Appendix R1: CAP Consistency Checklist states that the Project’s inclusion of bike parking, electric vehicle charging infrastructure, designated parking spaces, and a Transportation Demand Management Program satisfies CAP Strategy 3: Bicycling, Walking, Transit & Land Use.⁵⁶ However, as explained below, the Project is inconsistent with the CAP and Regional Transportation Plan in key ways and the DEIR’s GHG analysis is also deficient for its failure to consider and mitigate significant long-term GHG impacts.

1. The City’s Greenhouse Gas (GHG) Analysis Fails To Account For The Significant Increase in GHG Emissions That Will Be Realized With The Operation Of The BUGS Beyond 12 Hours Of Test Per Year.

The City’s GHG analysis calculates that BUGs at the Project Site will generate 1.3757 tons per year of CO₂ equivalent for each 12 hours of operation.

environmental effect of a project requires consideration of reasonably foreseeable indirect physical changes caused by the project); 14 C.C.R. § 15358(a)(2) (defining “effects” or “impacts” to include indirect or secondary effects caused by the project and are “later in time or farther removed in distance, but are still reasonably foreseeable” including “effects on air”); CEQA Guidelines, Appendix G, § VIII: Greenhouse Gas Emissions (stating agencies should consider whether the project would “generate greenhouse gas emissions, *either directly or indirectly*, that may have a significant impact on the environment.”) (emphasis added).

⁵³ 14 C.C.R. § 15064.4(b); see also *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504 (holding that lead agencies have an obligation to track shifting regulations and to prepare EIRs in a fashion that keeps “in step with evolving scientific knowledge and state regulatory schemes”).

⁵⁴ 14 C.C.R. § 15064.4(b)(1), (3).

⁵⁵ DEIR, p. IV.C-48

⁵⁶ DEIR, Appendix R1: Climate Action Plan Consistency Checklist (“CAP Checklist”), pp. 7–10, Attachment D.

L5887-004acp

Therefore, a revised DEIR must be written for the Project that includes an analysis of the additional operation of the BUG that will occur at the project site that is not accounted for in the current GHG analysis and then compare those results against the goals in the LA Green New Deal, the 2008 Climate Change Scoping Plan, and the 2020-2045 RTP/SCS.

2. The City's Greenhouse Gas Analysis Relies On An Unsupported Threshold

The City has not adopted a numerical significance threshold for assessing impacts related to GHG emissions and has not formally adopted a local plan for reducing GHG emissions. The DEIR concludes that the Project's GHG impacts would be less than significant based on the Project's consistency with the goals and actions to reduce GHG emissions found in the City's Green New Deal, and the 2017 California Climate Change Scoping Plan. While the City claims compliance with AB 32 Cap-and-Trade, the Project is not subject to Cap-and-Trade. Claims by the City that the compliance by third parties (those they are reliant on for energy) to reduce GHG emissions will reduce the Project's GHG emissions are unsupported and cannot be viewed as a reliable mitigation measure.⁵⁷ Furthermore, the City relies on "project design features" and credits when analyzing the Project's GHG impacts even though these measures are not legally enforceable like mitigation measures are.⁵⁸ The City must correct these assumptions regarding the GHG analysis in a revised EIR.

3. The DEIR Relies on Project Design Features to Reduce GHG Impacts and Fails to Adopt All Feasible Mitigation Measures to Reduce Significant GHG Impacts

The Project includes Project Design Feature GHG-PDF-1 which includes many measures to help reduce the overall GHG impact of the Project. As a Project design feature though, there is no requirement that the Project follows through with these designs once the proper permitting has been approved. The only way to make these features legally enforceable is to make them mitigation measures under CEQA.⁵⁹ This, combined with the unaccounted for GHG emissions above, places the

⁵⁷ DEIR. 2021. Appendix IV.C. pg IV.C-78; IV.C-45; *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467.

⁵⁸ DEIR, p. IV.C-46.

⁵⁹ PRC § 21081.6(b); 14 C.C.R. § 15126.4(a)(2); *Lotus v. Dep't of Transp.* (2014) 223 Cal. App. 4th 645, 651-52.

burden on the City to explain specifically why the proposed mitigation is not feasible.⁶⁰ All feasible mitigation should be adopted in a revised DEIR.

C. The DEIR Fails to Accurately Disclose and Mitigate Significant Noise Impacts

The CEQA Guidelines require an EIR 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 . . .”⁶¹ The DEIR’s noise analysis fails to accurately disclose the Project’s noise impacts for several reasons.

1. The DEIR Fails to Require All Feasible Mitigation Measures to Reduce Significant Impacts

Mr. Watry concludes that the mitigation measures for construction noise offered by the DEIR may be insufficient. While Mr. Watry agrees that the temporary sound barriers would not reduce noise impacts to levels above the barrier,⁶² Mr. Watry’s analysis identified additional feasible mitigation that would further reduce the Project’s construction noise impacts, which are not discussed in the DEIR. Mr. Watry recommends that the DEIR’s mitigation measure be revised to provide either plexiglass barriers or sound blankets attached to scaffolding for each story of adjacent buildings during Project construction in order to further reduce noise above the DEIR’s proposed noise barrier.⁶³

The DEIR’s failure to implement all feasible mitigation measures to reduce construction noise impacts before declaring them significant and unavoidable is a separate CEQA violation. The DEIR concludes that construction noise impacts are significant and unavoidable. Therefore, the DEIR must adopt all feasible mitigation measures to reduce construction noise impacts to the greatest extent feasible, including but not limited to those recommended by Mr. Watry.⁶⁴

⁶⁰ See *Covington*, 43 Cal.App.5th at 879–883 (holding that revised EIR was required where respondent failed to explain why the petitioners’ proposed mitigation measure was not feasible).

⁶¹ CEQA Guidelines, Appendix G, Sec. XII(d).

⁶² Watry Comments, p. 2.

⁶³ Watry Comments, pp. 2-3.

⁶⁴ *Covington*, 43 Cal.App.5th at 883.

L5887-004acp

D. The DEIR Fails to Adequately Analyze the Project's Cumulative Impacts

CEQA requires the lead agency to include a reasonable and good faith analysis of cumulative impacts in an EIR.⁶⁵ The analysis must be sufficiently detailed to correspond to the severity of the impact and the likelihood that it will occur.⁶⁶ While an EIR may provide less detail in its cumulative impact analysis than for project-specific effects, the discussion must provide sufficient specificity to enable the agency to make findings that a project will, or will not, have a significant cumulative impact where the possible effects of the project are “individually limited but cumulatively considerable.”⁶⁷

The DEIR's cumulative impact analysis fails to comply with CEQA in at least two major ways. First, the DEIR fails to analyze the cumulative health risk of the Project with other nearby projects that are within 1000 feet of the Project site and may undergo concurrent construction, including the Arts Club Project and 9034 Sunset, both of which have pending CEQA documents before the City.⁶⁸

1. The DEIR Fails to Evaluate Cumulative Air Quality Impacts

CEQA requires analysis of cumulative impacts, defined as “two or more individual effects which, when considered together, are considerable.”⁶⁹ Such impacts may “result from individually minor but collectively significant projects taking place over a period of time.”⁷⁰ Cumulatively considerable means that “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”⁷¹ CEQA Guidelines section 15130(b)(1)

⁶⁵ 14 §§ C.C.R. 15130(a); 15065(a); 15355(b); *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 109.

⁶⁶ 14 C.C.R. § 15130(b); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 729 (EIR inadequate for failure to include “some data” on cumulative groundwater impacts).

⁶⁷ PRC § 21083(b)(2); 14 C.C.R. §§ 15064(h)(1), 15065(a)(3); 14 C.C.R. § 15130(b).

⁶⁸ See City environmental docs list: <https://www.weho.org/city-government/city-departments/planning-and-development-services/current-and-historic-preservation-planning/environmental-documents>.

⁶⁹ 14 C.C.R. § 15355.

⁷⁰ 14 C.C.R. § 15355(b).

⁷¹ 14 C.C.R. § 15064(h)(1).

provides two options for analyzing cumulative impacts: (A) list “past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or” (B) summarize “projection contained in an adopted local, regional or statewide plan, or related planning document that describes or evaluates conditions contributing to the cumulative effect.”⁷² “When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.”⁷³

The DEIR neglects to consider the amount of emissions associated with the cumulative projects in the vicinity of the Project. As a result, the DEIR fails to evaluate the severity of the Project’s cumulative impacts on air quality, GHGs, or noise. These omissions are particularly glaring given that the DEIR itself identified 74 other related cumulative projects near the Project site.⁷⁴

The DEIR similarly fails to evaluate the Project’s cumulative impacts through its relationship with the LA Green New Deal or how compliance with the plan will ensure impacts are not cumulatively considerable. Thus, the DEIR fails to conduct the cumulative air quality, GHG, and noise impacts analysis as required by CEQA.

The law is clear that individually insignificant incremental contributions to air pollution are part of a cumulatively considerable impact requiring analysis in an EIR.⁷⁵ In *Kings County Farm Bureau v. City of Hanford*, the City of Hanford prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant.⁷⁶ Notwithstanding the fact that the EIR found that the project region was out of attainment for PM₁₀ and ozone, the City failed to incorporate mitigations for the project’s cumulative air quality impacts from project emissions because it concluded that the Project would contribute “less than one percent of area emissions for all criteria pollutants.”⁷⁷ The Court held that it was an error for the City to not take

⁷² 14 C.C.R. § 15130(b)(1).

⁷³ *Id.*; see *id.* § 15130(a) (stating that the lead agency shall describe its basis for concluding that an incremental effect is not cumulatively considerable).

⁷⁴ DEIR, p. III-7 to -13, Table III-1.

⁷⁵ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.

⁷⁶ *Id.* at 706.

⁷⁷ *Id.* at 719.

into account the nonattainment with air quality standards.⁷⁸ Regarding ozone, the Court reasoned that “[t]he relevant question to be addressed in the EIR is not the relative amount of [ozone] precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.”⁷⁹ In addition, the Court generally held that the EIR improperly sidestepped the cumulative impacts analysis when it “focused on the individual project’s relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality.”⁸⁰

Here, the DEIR acknowledges that the SCAQMD is in nonattainment for state air quality standards for O₃, PM_{2.5}, and PM₁₀.⁸¹ Given these background conditions, even marginal contributions of O₃, PM_{2.5}, and PM₁₀ from the Project and other projects in the vicinity can have a significant cumulative effect of exacerbating the already serious nonattainment of air quality standards. Under *Kings County*, the Project’s small and incremental contribution to air pollution in the SCAB must be understood in the context of poor air quality that currently exists.⁸² Yet the DEIR does not even mention O₃, PM_{2.5}, and PM₁₀ in its discussion of Cumulative Impacts.⁸³ The DEIR must be revised to consider the circumstances of the O₃, PM_{2.5}, and PM₁₀ problem in the region in conjunction with the cumulatively considerable air quality effects from this source of O₃, PM_{2.5}, and PM₁₀ emissions.

The DEIR must be revised and recirculated to analyze all cumulative projects in the City of Los Angeles and Los Angeles County generally which may have relevant cumulative air quality, health risk, GHGs, and noise impacts when combined with the Project’s impacts.

⁷⁸ *Id.* at 718–721.

⁷⁹ *Id.* at 718.

⁸⁰ *Id.* at 721.

⁸¹ DEIR, p. IV.A-10.

⁸² *Kings County*, 221 Cal.App.3d at 718–721.

⁸³ DEIR, p. IV.A-10.

L5887-004acp

IV. THE CITY LACKS SUBSTANTIAL EVIDENCE TO APPROVE THE PROJECT'S LOCAL LAND USE PERMITS AND THE VESTING TENTATIVE MAP

The Project requires a Specific Plan Adjustment.⁸⁴ This adjustment requires the City to make findings regarding land use consistencies and/or environmental factors. As discussed throughout this letter, the DEIR fails to disclose the Project's potentially significant, unmitigated impacts on air quality, health risk, and noise. These impacts create inconsistencies with the Specific Plan Project Permit adjustment and the VTTM which the DEIR fails to disclose and mitigate. As a result of these impacts, the City is unable to make the necessary findings under the City's municipal codes and State land use laws to approve the Project's local land use permits.

A. The City Cannot Make the Required Findings for a Specific Plan Project Permit Adjustment

In order to approve the Project's conditional use permits, the City's Municipal Code requires the City to make a finding that the permit sought will "incorporate mitigation measures, monitoring of measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible."⁸⁵

As discussed herein, the Project has potentially significant, unmitigated impacts on air quality, health risk, and noise that are likely to harm public health and welfare if not fully mitigated. In particular, the DEIR's proposed finding that the Project will result in significant and unavoidable construction noise impacts⁸⁶ demonstrates that the Project's construction noise will constitute an ongoing menace to local sensitive receptors from noise throughout the Project's 3-year construction period. Furthermore, as Mr. Watry notes, existing ambient noise levels at two receptors near the Project will move from "conditionally acceptable" to "normally unacceptable" due to noise emanating from the Project. As such the City should not approve the Specific Plan Project Permit unless those noise levels can be mitigated to conditionally acceptable levels.⁸⁷

⁸⁴ DEIR, p. II-36.

⁸⁵ LAMC Section 12.22-A,30(e)

⁸⁶ DEIR, p. IV.E-42.

⁸⁷ Watry Comments, pp. 3-4.

L5887-004acp

These unmitigated impacts render the Project inconsistent with the use permit standards set forth in the Municipal Code. The City therefore cannot make the necessary findings under the Code to approve the Project's Specific Plan Project Permit adjustment until these deficiencies in the DEIR are corrected, and until these impacts are fully mitigated.

B. The City Cannot Make the Required Findings for a Vesting Tentative Map Due to the Substantial Environmental Damage Caused By the Project

The Subdivision Map Act ("SMA") provides guidance as to the findings that the agency must make when approving a tentative map, and requires agencies to deny map approval if the project would result in significant environmental or public health impacts.

Government Code, section 66474, provides:

A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- (c) That the site is not physically suitable for the type of development.
- (d) That the site is not physically suitable for the proposed density of development.
- (e) That 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) That the design of the subdivision or type of improvements is likely to cause serious public health problems.

(g) That 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. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

(Emphasis added.)

Furthermore, where an EIR has been prepared, and demonstrates that there will be significant and unavoidable environmental impacts, a Vesting Tentative Map (“VTM”) can be certified only if the decision makers issue a statement of overriding considerations, per Government Code, section 66474.01:

Notwithstanding subdivision (e) of Section 66474, a local government may approve a tentative map, or a parcel map for which a tentative map was not required, if an environmental impact report was prepared with respect to the project and a finding was made pursuant to paragraph (3) of subdivision (a) of Section 21081 of the Public Resources Code that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.⁸⁸

Government Code, section 66474, subsections (e) and (f) implicate CEQA, and prohibit decision makers from approving a tract map where the project is “likely to cause substantial environmental damage” or “cause serious public health problems.”⁸⁹ And the City is unable to make a statement of overriding considerations for the Project under CEQA because the City has not mitigated the Project’s construction noise impacts to the greatest extent feasible, and has not

⁸⁸ Gov. Code, § 66474.01.

⁸⁹ Gov. Code, § 66474, subds. (e), (f).

January 5, 2022

Page 21

demonstrated that the Project's benefits outweigh its costs, including providing employment opportunities for highly trained workers.⁹⁰

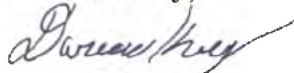
Here, approval of the project is likely to cause substantial impacts to air quality, public health, and noise. The City's decision makers therefore cannot make the necessary SMA findings based on the record before it. The City must correct the errors in the DEIR, adopt adequate mitigation measures to reduce impacts to less than significant levels, and must provide substantial evidence supporting the Project's proposed statement of overriding considerations to address the Project's outstanding, unmitigated significant impacts before the City can approve the VTTM.

V. CONCLUSION

For the reasons discussed above, the DEIR for the Project remains wholly inadequate under CEQA. It must be thoroughly revised to provide legally adequate analysis of, and mitigation for, all of the Project's potentially significant impacts. These revisions will necessarily require that the DEIR be recirculated for public review. Until the DEIR has been revised and recirculated, as described herein, the City may not lawfully approve the Project.

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

Sincerely,



Darien Key

DKK:acp

Attachments

⁹⁰ Pub. Res. Code § 21081(a)(3), (b).
L5887-004acp