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February 15, 2023

**VIA EMAIL AND OVERNIGHT MAIL**

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**Re: Agenda Item 1: Comments on 8th, Grand and Hope Project (SCH No. 2019050010, Case Nos. ENV-2017-506-EIR; ZA-2021-7053-ZAI; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN)**

Dear Ms. Majas:

On behalf of **Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA")**, we submit these comments on the Final Environmental Impact Report ("FEIR") and related entitlements 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")<sup>1</sup> by the City of Los Angeles ("the City"). The Project's FEIR and entitlements will be considered at the February 15, 2023 Deputy Advisory Agency, Hearing Officer, and Zoning Administrator hearing as Agenda Item #1.

The Applicant 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).

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<sup>1</sup> Public Resources Code § 21000 *et seq.*; 14 Cal. Code Regs. ("C.C.R.") §§ 15000 *et seq.*



On January 5, 2021, we submitted comments on the Draft EIR (“DEIR”) prepared for the Project.<sup>2</sup> Our comments of the DEIR demonstrated that the DEIR failed to comply with CEQA by failing to accurately disclose potentially significant impacts, failing to support its significance findings with substantial evidence, and failing to mitigate the Project’s significant impacts to the greatest extent feasible, in violation of CEQA. As will be explained herein, these flaws have not been remedied in the City’s FEIR, which contains inadequate responses to our comments. As a result of these unresolved deficiencies, the Project’s environmental review still does not meet the standards of CEQA.

Several discretionary approvals are required to implement the Project, including a Vesting Tentative Tract Map pursuant to Los Angeles Municipal Code (“LAMC”) Section 17.03 and 17.15; a Transfer of Floor Area Rights pursuant to LAMC Section 14.5.6; Zone Variances pursuant to LAMC Section 12.27, Specific Plan Project Adjustments pursuant LAMC Section 11.5.7 E; Director’s Decision to allow 79 trees to be planted on-site in lieu of the otherwise required 145 trees pursuant to LAMC Section 12.21 G.2(a)(3); Site Plan Review pursuant to LAMC Section 16.05, Zoning Administrator’s Interpretation pursuant to LAMC Section 12.21 A.2 (collectively, “Approvals”). Due to the Project’s inadequate environmental review, the City cannot make the requisite findings to approve the Project Approvals under the City’s municipal codes, or to certify the FEIR or adopt a statement of overriding considerations pursuant to CEQA.<sup>3</sup>

These comments were prepared with the assistance of environmental health, air quality, and GHG expert Dr. James Clark, Ph.D.,<sup>4</sup> and noise expert Derek Watry of Wilson Ihrig.<sup>5</sup> Their comments are fully incorporated herein and submitted to the City herewith.

Based upon our review of the FEIR and supporting documentation, we conclude that the FEIR fails to comply with the requirements of CEQA. Although the City revised its air quality analysis and prepared a quantified health risk analysis (“HRA”) in response to our DEIR comments, our review demonstrates that the FEIR’s air quality, health risk, noise, and land use analyses remain substantially inaccurate and incomplete. As a result, the FEIR still fails to adequately disclose and mitigate the Project’s significant public health, air quality,

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<sup>2</sup> **Attachment C:** Comments on 8th, Grand and Hope DEIR (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (Jan. 5, 2022).

<sup>3</sup> Pub. Res. Code § 21081; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

<sup>4</sup> Comments and curriculum vitae of Mr. Clark are attached to this letter as **Attachment A**.

<sup>5</sup> Mr. Watry’s comments and curriculum vitae are included as **Attachment B**.



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and noise impacts. Like the DEIR, the FEIR still lacks substantial evidence to support its conclusions and still fails to properly mitigate the Project's significant environmental impacts. Further, the City cannot make the requisite findings under the LAMC to make the requested Approvals because these impacts remain significant and unmitigated.

The City cannot approve the Project until the errors and omissions in the FEIR are remedied, and a revised DEIR is recirculated for public review and comment which fully discloses and mitigates the Project's potentially significant environmental and public health impacts. CREED LA urges the Deputy Advisory Agency, Hearing Office, and Zoning Administrator require the City revise and recirculate the DEIR before any further action is taken on the Project.

Additionally, the agenda for this hearing was uploaded to the City website on February 14, less than 72 hours prior to the hearing, in violation of the Brown Act. As will be explained below, the hearing must be continued to a later date to be properly noticed.

## **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 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. BROWN ACT**

The agenda for this hearing was uploaded to the City website on February 14, less than 72 hours prior to the hearing, in violation of the Brown Act. The Brown Act provides that members of the public have the right to review the agenda of a board's upcoming meeting in advance of the meeting. Government Code section 54954.2 specifically requires that the governing body post the agenda for a regular meeting 72 hours before the meeting and 24 hours before a special meeting. This includes posting the agenda in a physical location and on the agency's "primary internet homepage."<sup>6</sup> In addition to making the agenda available, materials related to agenda items and used by the governing body during a meeting must also be made available for review.<sup>7</sup>

Today's hearing is a regular meeting of the Department of City Planning Subdivisions and Hearing Officer. It is not a special meeting. Accordingly, the City was required to post the agenda for public review no later than 72 hours prior to the hearing, by February 12, 2023 at 10:00a.m. The City failed to timely post the agenda. On February 14, we emailed the Department of City Planning and explained that the agenda and staff report for the Project's hearing were not available online. Later that day, these documents were uploaded to the City website.<sup>8</sup> Here, the screenshot below of the agenda's<sup>9</sup> document properties shows

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<sup>6</sup> Gov. Code § 54954.2)(a)(2)(A).

<sup>7</sup> Gov. Code, § 54957.5, subd. (b)(2).

<sup>8</sup> <https://planning.lacity.org/dcpapi/meetings/document/73909>.

<sup>9</sup> The digital agenda is available at <https://planning.lacity.org/dcpapi/meetings/document/73909>.

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that the agenda was last modified on February 13, 2023, which demonstrates that it was not uploaded any earlier than February 13:

Document properties

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File size: 119 KB

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Fast web view: Yes

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The document properties above show that the agenda was last modified on 2/13, indicating that it was not uploaded 72 hours before the February 15<sup>th</sup> hearing. Similarly, below is a screenshot of the staff report's<sup>10</sup> document properties, also showing that the agenda was last modified on February 13, 2023.

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<sup>10</sup> Staff report, [https://planning.lacity.org/plndoc/Staff\\_Reports/2023/02-13-2023/VT 74876.pdf](https://planning.lacity.org/plndoc/Staff_Reports/2023/02-13-2023/VT 74876.pdf)

#### Document properties

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The City's failure to timely post the agenda in a physical location and on the agency's "primary internet homepage"<sup>11</sup> is a violation of the Brown Act. This violation prejudiced CREED LA and other members of the public's ability to attend the hearing and respond to the agenda and staff report for the Project. The 90-page staff report contains Findings regarding the Project's Approvals, and necessary details of the Approvals sought. Without the necessary notice required by the Brown Act, the public has not had sufficient time to review and comment on the Project's Approvals. Per the requirements of the Brown Act, the hearing must be continued to a later date to be properly noticed.

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<sup>11</sup> Gov. Code § 54954.2(a)(2)(A).



### **III. THE FEIR FAILS TO ADEQUATELY ANALYZE, QUANTIFY, AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS**

An EIR must fully disclose all potentially significant impacts of a project, and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.<sup>12</sup> An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>13</sup>

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by law.<sup>14</sup> 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 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.<sup>15</sup> In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."<sup>16</sup>

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not "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."<sup>17</sup>

CEQA requires that a lead agency evaluate and prepare written responses to comments in an FEIR.<sup>18</sup> Agencies are required to provide "detailed written response to comments . . . to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and the public participation in the environmental review process is meaningful."<sup>19</sup> When a comment raises a "significant environmental issue," the written responses must describe the

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<sup>12</sup> 14 CCR § 15064(b).

<sup>13</sup> *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

<sup>14</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

<sup>15</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>16</sup> *Id.*; *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

<sup>17</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355.

<sup>18</sup> PRC § 21091(d); 14 CCR §§ 15088(a), 15132.

<sup>19</sup> *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.4th 889, 904.



disposition of each such issue raised by commentators.<sup>20</sup> Specifically, the lead agency must address the comment “in detail giving reasons why” the comment was “not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.”<sup>21</sup>

**A. The FEIR Still Fails to Recognize the City’s Legal Duty to Analyze Health Risks from Construction and Operational Emissions**

In our previous comments on the DEIR, we explained that the City was required to prepare a quantified HRA for the Project because CEQA requires that 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.”<sup>22</sup>

In response, the City prepared an HRA for the Project’s construction and operations and included it in the FEIR.<sup>23</sup> But the City maintains that the HRA was only conducted for informational purposes, and continues to assert that a HRA is not required by CEQA.<sup>24</sup> The FEIR, in Response to Comment 3-6, reasons that construction emissions of Diesel Particulate Matter (“DPM”) need not be analyzed in an HRA because they occur over a shorter time period than 70 years.<sup>25</sup> This reasoning is flawed and should be struck from the FEIR. Individual cancer risk is not just affected by the duration of exposure to TACs, but also the concentration of the individual’s unique exposure scenario and the toxicity of the chemical. Accordingly, OEHHA<sup>26</sup> guidance sets a recommended threshold for preparing an HRA of a construction period of two months or more.<sup>27</sup>

**B. The FEIR’s HRA Fails to Analyze Health Risk Impacts on All Groups of Sensitive Receptors**

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<sup>20</sup> PRC §21091(d); 14 CCR §§15088(c), 15132(d), 15204(a).

<sup>21</sup> 14 CCR § 15088(c); see *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124 (“*Laurel II*”); *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal. App. 4th 603, 615.

<sup>22</sup> *Id.* at 518.

<sup>23</sup> Appendix FEIR-2.

<sup>24</sup> FEIR, pg. II-33; Appendix FEIR-2, pg. 2.

<sup>25</sup> FEIR, pg. II-31.

<sup>26</sup> 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>.

<sup>27</sup> 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](http://oehha.ca.gov/air/hot_spots/hotspots2015.html) (“OEHHA Guidance”), p. 8-18.



CEQA requires analysis of human health impacts. Its fundamental purpose is to maintain a quality environment for “the people “of the state. CEQA’s statutory scheme and legislative intent include an express mandate that agencies consider and analyze human health impacts, acknowledges that human beings are an integral part of the “environment”, and mandates that public agencies determine whether a the “*environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly*,”<sup>28</sup> and to “take immediate steps to identify any critical thresholds for the *health and safety of the people* of the state and take all coordinated actions necessary to prevent such thresholds being reached.”<sup>29</sup>

The HRA prepared in response to CREED LA’s comments fails to analyze impacts on all sensitive receptors, and therefore remains inadequate. Health risk impacts on children are measured using Age Sensitivity Factors (“ASFs”).<sup>30</sup> As stated in the FEIR, ASFs “account for increased sensitivity of early-life exposure to carcinogens.”<sup>31</sup> ASFs account for increased sensitivity of children by weighting the impacts of their exposure to a project’s estimated emissions of Toxic Air Contaminants (“TACs”). In the Project’s HRA, the City fails to make early-life exposure adjustments to analyze impacts on children, thus failing to disclose the severity of the Project’s health risk impacts on this group of sensitive receptors. The Project site is surrounded by residential and mixed-use land uses that can hold children, as identified in the EIR’s environmental setting.<sup>32</sup>

The FEIR incorrectly states that relevant guidance does not support the use of ASFs to analyze health impacts of DPM generated by construction activities or Project operations.<sup>33</sup> This response is a red herring which ignores CEQA’s legal requirement to analyze whether the “environmental effects of a project will cause substantial adverse effects on *human beings*, either directly or indirectly,”<sup>34</sup> which necessarily includes children and infants. Children and infants are more sensitive to acute exposure to TACs, and suffer greater health impacts over short periods of exposure. ASFs are a scientifically accepted method of quantifying the risk to children and infants. The City provides no alternative analysis.

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<sup>28</sup> Pub. Res. Code (“PRC”) § 21083(b)(3), (d) [emphasis added].

<sup>29</sup> See PRC §21000 et seq. [emphasis added]

<sup>30</sup> Appendix FEIR-2, pg. 4.

<sup>31</sup> Appendix FEIR-2, pg. 4; see also City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10.

<sup>32</sup> DEIR, pg. III-2.

<sup>33</sup> Appendix FEIR-2, pg. 4-6.

<sup>34</sup> PRC § 21083(b)(3), (d) (emphasis added).



The FEIR considers guidance by California Office of Environmental Health Hazard Assessment (“OEHHA”), acknowledging that it recommends an age-weighting factor be applied to all carcinogens regardless of purported mechanism of action.<sup>35</sup> Since DPM is carcinogenic, the OEHHA guidance provides that ASFs should be applied to analyze this Project’s DPM impacts on children.<sup>36</sup> But the FEIR argues that the OEHHA guidance should not be considered because it has not been adopted by SCAQMD as a CEQA significance threshold.<sup>37</sup> This argument is flawed because the City does not identify any supporting evidence demonstrating that OEHHA’s scientific conclusions regarding children’s heightened susceptibility to TACs such as DPM should be overlooked. The FEIR’s argument also overlooks the City’s ability to select its own methodology, independent of those used by regulatory agencies, if the methodology is supported by substantial evidence, as with OEHHA’s.<sup>38</sup> Further, the City elects to rely on guidance from U.S. EPA,<sup>39</sup> which like the OEHHA guidance, also has not been adopted by SCAQMD as a CEQA significance threshold, rendering the FEIR’s justification for omitting ASFs specious.

The FEIR elects to rely on U.S. EPA guidance<sup>40</sup> related to early life exposure adjust factors whereby the adjustment factors are only considered when carcinogens act “through the mutagenic mode of action.”<sup>41</sup> The FEIR concludes that DPM is not mutagenic because only some of its constituent particles are mutagenic – and as a result, use of ASFs is not required for measuring DPM health impacts. In support, the FEIR cites to the U.S. EPA’s Integrated Risk Information System (“IRIS”). However, the FEIR’s interpretation of this guidance is incorrect. IRIS Chemical Assessment Summary for Diesel Particulate Matter states that DPM is mutagenic:

[D]iesel exhaust (DE) is likely to be carcinogenic to humans by inhalation from environmental exposures. The basis for this conclusion includes the following lines of evidence: [...] **extensive supporting data including the demonstrated mutagenic and/or chromosomal effects of DE** and its organic constituents, and knowledge of the known mutagenic and/or

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<sup>35</sup> Appendix FEIR-2, pg. 4.

<sup>36</sup> City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10.

<sup>37</sup> Appendix FEIR-2, pg. 4-5.

<sup>38</sup> *N. Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 Cal.App.4th 614, 642-643.

<sup>39</sup> Appendix FEIR-2, pg. 6.

<sup>40</sup> U.S. EPA. 2006. Memorandum – Implementation of the Cancer Guidelines and Accompanying Supplemental Guidance – Science Policy Council Cancer Guidelines Implementation Workgroup Communication II: Performing Risk Assessments That Include Carcinogens Described in the Supplemental Guidance as having a Mutagenic Mode of Action.

<sup>41</sup> Appendix FEIR-2, pg. 6.



carcinogenic activity of a number of individual organic compounds that adhere to the particles and are present in the DE gases.<sup>42</sup> [emphasis added]

The U.S. EPA clearly identifies DPM as a mutagenic carcinogen. Thus, even by the City's preferred methodology, the effect of the Project's DPM emissions on children must be analyzed using ASFs. Further, Dr. Clark identifies additional guidance from the Scientific Review Panel identifying DPM as mutagenic.<sup>43</sup> And the City of Los Angeles's own Air Quality And Health Effects guidance provides that exposure to DPM may be particularly harmful to children, whose lungs are still developing.<sup>44</sup>

As demonstrated above, health impacts on children are not disclosed without use of ASFs due to the increased sensitivity of children to the harmful effects of DPM. Because the City's HRA omitted application of ASFs, the Project's health risk impacts on especially-sensitive populations has not been analyzed. The omission of information regarding the Project's health effects on children constitutes an ongoing failure to analyze a potentially significant impact under CEQA.

### **C. Substantial Evidence Demoustrates that the Project will have a Significant Health Risk Impact on Children**

The FEIR's HRA concludes that the Project's impacts will not exceed the City's significance threshold, which provides that health impacts are significant when the Project exposes sensitive receptors to air contaminants that exceed the maximum incremental cancer risk of 10 in one million.<sup>45</sup> But as explained above, this HRA fails to apply ASFs to evaluate impacts on children. Dr. Clark corrected the City's analysis to address impacts on children, and found that the Project's operational and construction impacts exceed the 10 in 1 million threshold.

Dr. Clark conducted this analysis using the concentrations of DPM calculated by the City, but incorporating ASFs to evaluate impacts on children.<sup>46</sup> This analysis finds that for a resident living near the Project site, the risk for a child born and living during the 1<sup>st</sup> two years of life will exceed 60 in 1,000,000, which exceeds the

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<sup>42</sup> U.S. Environmental Protection Agency, Integrated Risk Information System (IRIS) Chemical Assessment Summary: Diesel engine exhaust; CASRN N.A., pg. 11, available at [https://iris.epa.gov/static/pdfs/0642\\_summary.pdf](https://iris.epa.gov/static/pdfs/0642_summary.pdf).

<sup>43</sup> Clark Comments, pg. 4.

<sup>44</sup> City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10, available at [https://planning.lacity.org/odocument/e1a00fbf-6134-4fa9-b6fd-54eee631effb/City of LA - Air Quality and Health Effects and Attachments.pdf](https://planning.lacity.org/odocument/e1a00fbf-6134-4fa9-b6fd-54eee631effb/City%20of%20LA%20-%20Air%20Quality%20and%20Health%20Effects%20and%20Attachments.pdf).

<sup>45</sup> Appendix FEIR-2, Executive Summary, pg. 1.

<sup>46</sup> Clark Comments, pg. 5.



10 in 1 million threshold.<sup>47</sup> Thus, the Project would have a significant health risk impact unanalyzed in the EIR. Thus, the FEIR must be revised and recirculated.

**D. The FEIR Fails to Mitigate the Project's Significant Health Risk Impact to a Less-Than-Significant Level**

As demonstrated in Dr. Clark's comments, the Project would have a significant health risk impact as of result of DPM emitted during Project construction and operations. The mitigation measures identified in the FEIR's Mitigation Monitoring Program ("MMRP") fail to reduce these impacts to a less-than-significant level. CEQA prohibits agencies from approving projects with significant environmental impacts when feasible mitigation measures can substantially lessen or avoid such impacts.<sup>48</sup> To fully mitigate the Project's significant health risk impacts, the FEIR must be revised to identify measures that limit DPM emissions during construction. For example, requiring use of construction equipment that meets EPA Tier 4 engine emissions standards would reduce emissions of PM and NOx over uncontrolled emissions.<sup>49</sup> Use of such equipment is feasible and effective.<sup>50</sup>

**E. The FEIR Fails to Analyze and Mitigate Potentially Significant Health Risks from Exposnre to Natural Gas**

The Project's operations would involve residential use of natural gas.<sup>51</sup> The Project's operations would consume a total of 4,859,882 cf of natural gas each year.<sup>52</sup> Although the Project will not use natural gas fireplaces, the Project's EIR does not preclude use of other gas appliances like stoves.<sup>53</sup>

Substantial evidence demonstrates that residential natural gas use has potentially significant health risks on residents.<sup>54</sup> In a 1992 meta-analysis of

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<sup>47</sup> Clark Comments, pg. 5.

<sup>48</sup> Pub. Resources Code § 21002.

<sup>49</sup> See Emissions Standards, US Nonroad Diesel Engines, available at <https://dieselnet.com/standards/us/nonroad.php>.

<sup>50</sup> San Francisco Clean Construction Ordinance Implementation Guide for San Francisco Public Projects." August 2015, available at: [https://www.sfdph.org/dph/files/EHSdocs/AirQuality/San\\_Francisco\\_Clean\\_Construction\\_Ordinance\\_2015.pdf](https://www.sfdph.org/dph/files/EHSdocs/AirQuality/San_Francisco_Clean_Construction_Ordinance_2015.pdf).

<sup>51</sup> DEIR, IV.B-15.

<sup>52</sup> DEIR, IV.B-25.

<sup>53</sup> FEIR, IV-3.

<sup>54</sup> <https://www.washingtonpost.com/politics/2023/01/06/gas-stove-pollution-causes-127-childhood-asthma-study-finds/>; <https://www.scientificamerican.com/article/the-health-risks-of-gas-stoves-explained/>;



studies on this topic, scientists at the EPA and Duke University found that nitrogen dioxide exposure that is comparable to that from a gas stove increases the odds of children developing a respiratory illness by about 20 percent.<sup>55</sup> Since then, numerous other studies have documented the effects of gas stove exposure on respiratory health. A 2013 meta-analysis of 41 studies found that gas cooking increases the risk of asthma in children and that NO<sub>2</sub> exposure is linked with currently having a wheeze.<sup>56</sup> Most recently, a study published last December found that 12.7 percent of childhood asthma cases in the U.S. can be attributed to gas stove use.<sup>57</sup> Dr. Clark's comments present further evidence demonstrating the potentially significant nature of this impact. The City cannot approve the Project unless this impact is analyzed and mitigated.

To mitigate this impact, the City must analyze the feasibility of measures which reduce the toxicity of operational natural gas use. These may include building electrification measures. The City's project design feature AIR-PDF-2, which precludes use of gas-powered fireplaces, does not implicate stoves in residential units. And GHG-PDF-1, which calls for the use of Energy Star-labeled appliances, would not reduce natural gas emissions from stoves, as "[t]here is no Energy Star label for residential ovens, ranges, or microwave ovens at this time."<sup>58</sup>

#### **F. The FEIR Fails to Require All Feasible Mitigation Measures to Reduce Significant Noise Impacts**

The FEIR acknowledges that the Project would have significant construction noise impacts. In our initial comments, Mr. Watry identified additional feasible mitigation measures that would reduce the Project's significant construction noise impacts. Mr. Watry recommended that the FEIR'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 FEIR's proposed noise barrier.<sup>59</sup>

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<sup>55</sup> Hasselblad et al., Synthesis of Environmental Evidence: Nitrogen Dioxide Epidemiology Studies; Journal of the Air & Waste Management Association Volume 42, 1992 - Issue 5, available at <https://www.tandfonline.com/doi/abs/10.1080/10473289.1992.10467018>.

<sup>56</sup> Lin et al., Meta-analysis of the effects of indoor nitrogen dioxide and gas cooking on asthma and wheeze in children, International Journal of Epidemiology, Volume 42, Issue 6, December 2013, Pages 1724–1737 <https://academic.oup.com/ije/article/42/6/1724/737113?login=false>.

<sup>57</sup> Gruenwald et al., Population Attributable Fraction of Gas Stoves and Childhood Asthma in the United States, Int. J. Environ. Res. Public Health 2023, 20(1), 75, available at <https://www.mdpi.com/1660-4601/20/1/75>.

<sup>58</sup> [https://www.energystar.gov/products/appliances/microwaves\\_ovens\\_and\\_ranges](https://www.energystar.gov/products/appliances/microwaves_ovens_and_ranges).

<sup>59</sup> Watry DEIR Comments, pp. 2-3.



In Responses 3-39 and 3-40, the City argues that these measures would be infeasible. The City first reasons that the project Applicant does not own the affected buildings, and thus cannot require the implementation of Mr. Watry's proposed measures. But Mr. Watry explains that the Applicant can make offers to neighboring residents to install noise-attenuating barriers. Mr. Watry points to other projects that implemented similar mitigation, demonstrating their general feasibility.<sup>60</sup>

The City also reasons that constructing the proposed noise barriers would in and of itself would create a significant noise impact. But Mr. Watry's comments explain that temporarily installing clear plexiglass or acrylic panels around balconies that face the project site would not be expected to generate a significant noise impact.<sup>61</sup> The City must consider this mitigation in a revised FEIR.

#### **IV. THE PROJECT DOES NOT PROVIDE AFFORDABLE HOUSING, IN CONFLICT WITH LOCAL LAND USE GOALS, OBJECTIVES, AND POLICIES**

The Project proposes to construct 580 residential units, but fails to provide any of the residential units at a below-market rate.<sup>62</sup> The Project's lack of affordable housing conflicts with applicable local goals, objectives, and policies promoting affordable housing. CEQA Guidelines section 15125(d) requires that an environmental impact report "discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans," which includes regional housing plans.<sup>63</sup> Therefore, the Project's inconsistency with applicable goals, objectives, and policies is also a violation of CEQA.

##### **A. The Project is Inconsistent with the Housing Element Update of the General Plan**

The Regional Housing Needs Assessment ("RHNA") is the California State-required process that seeks to ensure cities and counties plan for enough housing in their Housing Element cycle to accommodate all economic segments of the community.<sup>64</sup> Accordingly, the Housing Element of the City's General Plan

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<sup>60</sup> Watry FEIR Comments, pg. 2.

<sup>61</sup> Watry FEIR Comments, pg. 2.

<sup>62</sup> DEIR, pg. IV.D-26, Appendix D, Table 4, pg. 6; FEIR, Section II, Responses to Comments; Planning Department Staff Report (these documents discuss the Project's consistency with housing policies but fail to identify any low-income housing provided by the Project).

<sup>63</sup> See also *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal. App. 5th 467, 543.

<sup>64</sup> Cal. Gov. Code Section 65580 – 65589.9; see City of Los Angeles, Draft Housing Element 2021-2019: What to Know about: RHNA, Site Selection, and Rezoning, available at



identifies the City's housing conditions and needs, evaluates the City's ability to meet its RHNA numbers, establishes the goals, objectives, and policies of the City's housing strategy, and provides an array of programs to create mixed-income neighborhoods across the City.<sup>65</sup> The Housing Element Annual Progress Report ("APR"), as required by Government Code Section 65400, requires jurisdictions to report on the annual progress towards meeting the RHNA during the calendar year, as well as on the status of implementation programs identified in the Housing Element.

The City's 2021 Housing Element APR shows that the City has not produced enough housing in the lower and moderate-income categories. As shown in the excerpted tables below from the 2021 APR, Los Angeles was obligated to identify capacity for 82,002 new units of housing in the 2013-2021 RHNA cycle.<sup>66</sup> And while the City produced more than 82,002 new units (118,604 total), the City failed to produce enough very-low, low, and moderate-income housing, with a deficit of 32,491 units.<sup>67</sup>

Income Level		RHNA Allocation by Income Level	2021	Total Units to Date (all years)	Total Remaining RHNA by Income Level
Very Low	Deed Restricted	20,427	1,979	8,991	11,436
	Non-Deed Restricted		-		
Low	Deed Restricted	12,435	536	4,263	8,172
	Non-Deed Restricted		-		
Moderate	Deed Restricted	13,728	18	845	12,883
	Non-Deed Restricted		-		
Above Moderate		35,412	13,082	118,604	-
Total RHNA		82,002			
Total Units			15,615	132,703	32,491

In the current cycle (2021-2029), Los Angeles is obligated to identify capacity for 456,643 new units of housing.<sup>68</sup> 115,978 of this total must be for very-low income

[https://planning.lacity.org/odocument/9feedc9d-07b6-479f-8ad9-84e93192c97a/What to Know about RHNA, Site Selection, and Rezoning - Updated.pdf](https://planning.lacity.org/odocument/9feedc9d-07b6-479f-8ad9-84e93192c97a/What%20to%20Know%20about%20RHNA,%20Site%20Selection,%20and%20Rezoning%20-%20Updated.pdf)

<sup>65</sup> City of Los Angeles, Draft Housing Element 2021-2019, Executive Summary, pg. 16-17, available at [https://planning.lacity.org/odocument/3d0775b4-6e54-4294-ad5a-85df6b8eaf82/Executive\\_Summary\\_\(Adopted\).pdf](https://planning.lacity.org/odocument/3d0775b4-6e54-4294-ad5a-85df6b8eaf82/Executive_Summary_(Adopted).pdf).

<sup>66</sup> City of Los Angeles, 2021 Housing Element Progress Report, Table B, [https://planning.lacity.org/odocument/e7ecf035-0003-4474-995b-b7a1a9f3cef8/Los Angeles 2021 APR - Summary.pdf](https://planning.lacity.org/odocument/e7ecf035-0003-4474-995b-b7a1a9f3cef8/Los%20Angeles%202021%20APR%20-%20Summary.pdf).

<sup>67</sup> *Id.*

<sup>68</sup> SCAG 6th Cycle Final RHNA Allocation Plan (approved by HCD on 3/22/21 and modified on 7/1/21), pg. 3, available at <https://scag.ca.gov/sites/main/files/file-attachments/6th-cycle-rhna-final-allocation-plan.pdf?1625161899>.



housing, 68,743 for low income housing, and 75,091 for moderate housing.<sup>69</sup> But the City's models show that the City is not on track to meet this RHNA requirement. AB 1397 (2017) requires the City to model the new housing units permitted during the upcoming cycle. However, the Housing Element concludes that the "model's prediction of approximately 47,000 new units being permitted in the city within the bonus-zoned cap in the span of 8 years falls an order of magnitude short of the city's upcoming cycle RHNA of 456,643 units."<sup>70</sup> The City estimates that affordable housing benefits would raise the 8- year prediction for new units permitted within the bonus-zoned cap from 47,208 to 61,158, which still falls short.<sup>71</sup>

Because the City has not produced and is not expected to produce enough affordable housing to meet its RHNA, projects that do not contribute to the City's RHNA are inconsistent with the City's Housing Element, a primary goal of which is to meet the RHNA. The Project does not provide any affordable units, and is therefore inconsistent with the Housing Element affordable housing goals. Specifically, Objective 2.2 states: "Promote sustainable neighborhoods that have mixed-income housing, jobs, amenities, services and transit." The City claims that the Project is consistent with this Objective because the Applicant would construct a mixed-use development with residential units at varying cost levels.<sup>72</sup> But the EIR fails to require the range of cost levels to include low-income units. The City does not acknowledge that while Objective 2.2 plainly promotes mixed-income housing, the Project fails to include any mixed-income affordable units. Thus, the Project is inconsistent with Objective 2.2.

Objective 2.5 provides that the City must "[p]romote a more equitable distribution of affordable housing opportunities throughout the city." Accordingly, Policy 2.5.2 provides: "Foster the development of new affordable housing units citywide and within each Community Plan area." The City failed to analyze the Project's consistency with Objective 2.5 and Policy 2.5.2.<sup>73</sup> To analyze consistency with these provisions, the City must revise the EIR to disclose the availability of affordable housing opportunities in the Central City Community Plan area, and analyze whether the Community Plan area has sufficient affordable housing relative to the rest of the City. Here, because the Project fails to provide any affordable housing, there is no evidence that the Project contributes to an equitable distribution of affordable housing opportunities throughout the City.

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<sup>69</sup> *Id.*

<sup>70</sup> Housing Element 2021-2029, Appendix 4.6-3, available at [https://planning.lacity.org/odocument/15117d38-35ca-416b-9980-25eb20201ba2/Appendix\\_4.6\\_-\\_Regression\\_Methodology.pdf](https://planning.lacity.org/odocument/15117d38-35ca-416b-9980-25eb20201ba2/Appendix_4.6_-_Regression_Methodology.pdf).

<sup>71</sup> *Id.*

<sup>72</sup> DEIR, Appendix D, Table 4, pg. 26.

<sup>73</sup> DEIR, Appendix D, Table 4.



Policy 2.5.1 further provides: “Target housing resources, policies and incentives to include affordable housing in residential development, particularly in mixed use development, Transit Oriented Districts and designated Centers.” The City also failed to analyze the Project’s consistency with this policy.<sup>74</sup> Here, the Project proposes residential units in a Transit Oriented Communities Area and designated High Quality Transit Area (“HQTA”).<sup>75</sup> But, whereas Policy 2.5.1 promotes locating affordable housing in such areas, the Project fails to include any affordable units and fails to take advantage of affordable housing incentives. Thus, the Project is inconsistent with Policy 2.5.1.

Further, the Project is not consistent with the Housing Element Update, which was adopted on June 14, 2022. Housing Element Update Policy 1.1.2 states: “Plan for appropriate land use designations and density to accommodate an ample supply of housing units by type, **cost**, and size within the City to meet housing needs, according to Citywide Housing Priorities and the City’s General Plan.” [emphasis added]. Here, the City produced enough above-moderate housing units in 2013 through 2021, but fell short in production of very-low, low, and moderate income housing. By proposing 580 residential units, but zero affordable housing units, the Project fails to provide an ample supply of housing units by costs which meet the City’s housing needs, as required by the Housing Element.

Objective 1.2 states: “Facilitate the production of housing, especially projects that include Affordable Housing and/or meet Citywide Housing Priorities.” Accordingly, Policy 1.2.1 provides: “Expand rental and for-sale housing for people of all income levels. Prioritize housing developments that result in a net gain of Affordable Housing and serve those with the greatest needs.” Because the instant Project fails to provide affordable housing, approval of the Project would be inconsistent with the Policy 1.2.1’s prioritization of affordable housing development.

Objective 3.2 states: “Promote environmentally sustainable buildings and land use patterns that support a mix of uses, housing for various income levels and provide access to jobs, amenities, services and transportation options.” Accordingly, Policy 3.2.2 provides: “Promote new multi-family housing, particularly Affordable and mixed-income housing, in areas near transit, jobs and Higher Opportunity Areas, in order to facilitate a better jobs-housing balance, help shorten commutes, and reduce greenhouse gas emissions.” Here, the Project proposes residential units in a designated HQTA.<sup>76</sup> But whereas Policy 3.2.2 promotes locating affordable and

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<sup>74</sup> DEIR, Appendix D, Table 4.

<sup>75</sup> DEIR, Section IV.D-17.

<sup>76</sup> DEIR, Section IV.D-17.

mixed-income housing in such areas, the Project fails to include affordable units. Thus, the Project is inconsistent with Policy 3.2.2.

As a result of these inconsistencies, the Project fails to comply with the Housing Element of the General Plan. The FEIR further fails to disclose and mitigate the above inconsistencies, in violation of CEQA. The FEIR must be revised and recirculated before the Project can be approved.

#### **B. City of Los Angeles General Plan Framework**

Policy 4.1.1 of the City of Los Angeles General Plan Framework states: “Provide sufficient land use and density to accommodate an adequate supply of housing units by type and cost within each City subregion to meet the twenty-year projections of housing needs.” Here, the Project fails to propose any affordable residential units while the City fails to meet its RHNA. Thus, this Project fails to contribute to an adequate supply of housing units by cost.

#### **V. CONCLUSION**

As is explained herein, timely access to the hearing’s agenda and staff report is required for the public to have an adequate opportunity to review and comment on the Project’s Approvals. The hearing must be continued to a later date to comply with the Brown Act.

Further, the FEIR’s air quality, health risk, noise, and land use analyses remain substantially inaccurate and incomplete, failing to comply with the requirements of CEQA. As a result, the FEIR still fails to adequately disclose and mitigate the Project’s significant public health, air quality, and noise impacts. As a consequence of these impacts, the City cannot make the requisite findings under the LAMC to make the requested Approvals because these impacts remain significant and unmitigated.

The City cannot approve the Project until the errors and omissions in the FEIR are remedied, and a revised FEIR is recirculated for public review and comment which fully discloses and mitigates the Project’s potentially significant environmental and public health impacts. CREED LA urges the Deputy Advisory



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Agency, Hearing Office, and Zoning Administrator require the City revise and recirculate the FEIR before any further action is taken on the Project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Aidan P. Marshall".

Aidan P. Marshall

Attachments  
APM:acp