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VIA EMAIL

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Central Area Planning Commission
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Re: Comments on the HPMC Building Project (Case No. APCC-2020-1764-SPESPP-SPR, Environmental Case No. ENV-2015-310-MND-REC1)

Dear Honorable Members of the Central Area Planning Commission, Mr. Hernandez:

We write on behalf of **Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA")** to provide preliminary comments on the HPMC Building Project ("Revised Project"), including the Addendum ("Addendum") to the October 2015 Initial Study/Mitigated Negative Declaration ("IS/MND") prepared by the City of Los Angeles ("City") for the Revised Project. A different version of the Project, the Virgil Avenue Parking Structure Project, was originally approved by the City in 2015 in reliance on the October 2015 IS/MND ("Approved Project"). These comments are submitted in accordance with the Central Area Planning Commission's ("Commission") Rules and Operating Procedures Rule 4.3(a). CREED LA reserves the right to submit additional comments and evidence

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at later hearings and proceedings on this Project, including but not limited to responding to the Commission Staff Report for its upcoming hearing on the Project.¹

The Project site is located at 1318 N. Lyman Place, 4470,4472,4474, 4480,4480-1/2, 4482, 4484,4490,4494 W. De Longpre Avenue and 1321 and 1323 N Virgil Avenue in the City of Los Angeles, California. The Assessor's Parcel Numbers are 5542-012-028, -029, -034, -035, and -036. The Approved Project involved the demolition of two 1-story Hollywood Presbyterian Medical Center ("HPMC") maintenance buildings, an adjacent single-family home, and surface parking lots, and construction of a parking structure for HPMC patients, visitors, and employees.² As evaluated in the IS/MND, the structure would contain 654 automobile parking spaces in 3 subterranean and 4 aboveground parking levels, with an additional level of parking on the roof deck.³ The Approved Project was constructed in 2018, and as built, contains 562 automobile parking spaces in 7 levels, consisting of 2 subterranean parking levels and 5 aboveground levels, with no roof deck.⁴

The subject of the Addendum is the Revised Project's addition of three levels of medical office space, containing 95,995 square feet of additional floor area, on top of the parking structure.⁵ The Revised Project requires the following approvals from the City: (1) a Project Permit Compliance for the addition of three levels of medical office space, containing 95,995 square feet of floor area, on top of the parking structure; (2) a Specific Plan Exception from Section 9.E.3 to allow for zero additional vehicle parking spaces for the Revised Project; (3) a Specific Plan Exception from Section 9.G to allow for the existing pedestrian throughway to satisfy the Specific Plan's requirement in lieu of an additional pedestrian throughway; and (4) a Site Plan Review for a development project that creates 95,995 square feet of nonresidential floor area.⁶

¹ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* ("Bakersfield") (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

² October 2015, Initial Study/Mitigated Negative Declaration for Virgil Avenue Parking Structure Project, pg. MND-1.

³ Addendum, pg. 8.

⁴ Addendum, pg. 8.

⁵ Addendum, pg. 8.

⁶ Addendum, pg. 24.

We reviewed the Addendum with the assistance of air quality and hazardous resources expert James J. Clark, Ph.D.⁷ The City must separately respond to his technical comments.

Our initial review of the Project revealed several flaws in the Addendum's analyses. Specifically, the Revised Project involves substantial changes to the Approved Project which were not analyzed in the original IS/MND, and require preparation of an environmental impact report ("EIR") or, at a minimum, a new IS/MND. The Addendum also fails to adequately disclose, analyze, and mitigate the Revised Project's new and more severe noise, air quality, greenhouse gas, and public health impacts. Therefore, the City lacks substantial evidence to support its decision that an Addendum is appropriate, rather than a subsequent or supplemental EIR or MND.

I. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental impacts of the Project. The coalition 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 City of Los Angeles.

Individual members of CREED LA and its member organizations include John Ferruccio, Jorge L. Aceves, and John P. Bustos. These individuals live, work, recreate, and raise their families in the City of Los Angeles 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 onsite.

CREED LA seeks to ensure a sustainable construction industry over the long-term by supporting projects that have positive impacts for the community, and which minimize adverse environmental and public health impacts. CREED LA has an interest in enforcing environmental laws that encourage sustainable

⁷ Dr. Clark's technical comments and curricula vitae are attached hereto as Exhibit A. L5740-003acp

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. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. THE CITY CANNOT RELY ON THE ADDENDUM FOR PROJECT APPROVAL

CEQA has two basic purposes, neither of which are satisfied by the Addendum. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.⁸ The EIR is the “heart” of this requirement.⁹ 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.”¹⁰

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”¹¹ An adequate EIR must contain facts and analysis, not just an agency’s conclusions.¹² CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.¹³

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.¹⁴ If an EIR identifies potentially significant impacts, it must then propose and evaluate

⁸ 14 Cal. Code Regs. § 15002(a)(1) (“CEQA Guidelines”); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁹ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

¹⁰ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹¹ CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

¹² *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

¹³ Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).

¹⁴ CEQA Guidelines § 15002(a)(2) and (3); *Berkeley Jets*, 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass’n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

mitigation measures to minimize these impacts.¹⁵ CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.¹⁶ Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.¹⁷ A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.¹⁸ This approach helps “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”¹⁹

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, identify whether a program EIR, tiering, or other appropriate process can be used for analysis of the project’s environmental effects, or determine whether a previously prepared EIR could be used with the project, among other purposes.²⁰ CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.²¹ A negative declaration may be prepared instead of an EIR when, after preparing an initial study, a lead agency determines that a project “would not have a significant effect on the environment.”²²

¹⁵ Pub. Resources Code §§ 21002.1(a), 21100(b)(3).

¹⁶ *Id.*, §§ 21002-21002.1.

¹⁷ CEQA Guidelines § 15126.4(a)(2).

¹⁸ *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).

¹⁹ *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

²⁰ CEQA Guidelines §§ 15060, 15063(c).

²¹ *See, e.g.*, Pub. Resources Code § 21100.

²² *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Resources Code § 21080(c).

When an environmental document has already been prepared for a project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.²³

The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

²³ Pub. Resources Code § 21166.
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- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.²⁴

Only where *none* of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum, or no further documentation.²⁵

The California Supreme Court clarified the standard of review applicable to subsequent approvals for activities that have been analyzed in a previous MND instead of an EIR in *Friends of the College of San Mateo Gardens v. San Mateo County Community College District ("San Mateo Gardens 1")*.²⁶ The fair argument standard of review was found to apply when determining whether an addendum was adequate or whether subsequent environmental review, either a subsequent MND or subsequent EIR, was required.²⁷ The Court found: when a project is initially approved by negative declaration, a "major revision" to the initial negative declaration will necessarily be required if the proposed modification may produce a significant environmental effect that had not previously been studied. Indeed, if the project modification introduces previously unstudied and potentially significant environmental effects that cannot be avoided or mitigated through further revisions to the project plans, then the appropriate environmental document would no longer be a negative declaration at all, but an EIR.²⁸

²⁴ CEQA Guidelines § 15162(a)(1)-(3).

²⁵ CEQA Guidelines § 15162(b).

²⁶ (2016) 1 Ca1.5th 937.

²⁷ *San Mateo Gardens I, supra*, 1 Ca1.5th at 959.

²⁸ *Id.* at 958.

On remand, the Court of Appeal elaborated and found the fair argument standard must be applied to determine whether a subsequent EIR was required after preparation of an MND. The Court of Appeal stated this was the only "reasonable interpretation" of *San Mateo Gardens I*:

[J]udicial review must reflect the exacting standard that an agency must apply when changes are made to a project that has been approved via a negative declaration, as opposed to the deferential standard that applies when the project was originally approved by an EIR. [The fair argument standard of review] is less deferential because a negative declaration requires a major revision—i.e., a subsequent EIR or mitigated negative declaration—whenever there is substantial evidence to support a fair argument that proposed changes 'might have a significant environmental impact not previously considered in connection with the project as originally approved.²⁹

Thus, when a project's impacts were previously reviewed in an MND, if substantial evidence shows changes to the project, changes in circumstances, or new information might result in a significant impact, adoption of an addendum is not permitted under CEQA.³⁰

Here, the City's decision to prepare an addendum, rather than a subsequent or supplemental EIR or MND, for the Project is not supported by substantial evidence. The Addendum does not simply provide "some changes or additions" to the EIR; rather, it includes analysis for a 95,995 square foot medical office project. This is an entirely new use that was not analyzed in the original IS/MND. Accordingly, the Project may have new or more severe significant impacts than previously analyzed in the IS/MND. And as described below, the Addendum's site-specific analysis conducted for the Project is also flawed in several ways. Therefore, the City may not rely on the Addendum for Project approval, and must provide detailed analysis of the Project's impacts in an EIR.

²⁹ *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* ("San Mateo Gardens II") (2017) 11 Cal.App.5th 596, 606-608, citations omitted.

³⁰ *Id.* at 606-607.
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A. Changes to the Project May Result in Significant Impacts that the Addendum Fails to Disclose and Mitigate.

The Revised Project involves the construction and operation of three new levels of medical office space, containing 95,995 square feet of additional floor area, on top of the Approved Project's original parking structure.³¹ The use of the Project site as an active medical facility is an entirely new and different purpose and use than the Approved Project's current use as a parking lot. This proposed use was not analyzed in the original IS/MND, and therefore requires a new CEQA document.³² The Revised Project's proposed use as a medical facility will also result in new and more severe impacts than analyzed in the IS/MND which were not known and could not have been known at the time the original project was approved because a medical facility was not contemplated for the Project site.³³ For these reasons, and as discussed herein, the City must prepare a subsequent or supplemental EIR, or at minimum an MND, for the Revised Project.

1. Noise

a. The Addendum Identifies New, Significant Construction Noise Impacts Resulting from the Revised Project

The Addendum considers whether the Revised Project's construction activities would generate "a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies."³⁴ The significance threshold the City uses is from the LA CEQA Thresholds Guide, which provides that "construction activities that would last more than 10 days in a 3-month period and increase ambient exterior noise levels by 5 dB(A) or more at a noise-sensitive use would normally result in a significant impact."³⁵ The Addendum finds that the Revised Project's "construction noise levels would result in a maximum increase of 0.9 dBA above the significance threshold without implementation of regulatory compliance measures."³⁶ Thus, these

³¹ Addendum, pg. 8.

³² 14 CCR § 15162(a)(2).

³³ 14 CCR § 15153(a)(3).

³⁴ Addendum, pg. 116.

³⁵ IS/MND, pg. 4.0-66; LA CEQA Thresholds Guide, pg. I.1-3.

³⁶ Addendum, pg. 118.

construction activities would cause significant noise impacts before mitigation.³⁷ The Addendum claims to mitigate these impacts through use of “mufflers, shields, sound barriers, and/or other noise reduction devices or techniques.”³⁸

The Court of Appeal in *San Mateo Gardens II* found that the need for mitigation measures for the subsequent project demonstrates the potential for adverse impacts, and that more than minor technical revisions are required:

CEQA Guidelines section 15162 does not clearly specify when the agency must prepare a subsequent negative declaration instead of issuing an addendum or providing no further documentation. But as we discuss further below, **a subsequent mitigated negative declaration is at least appropriate where a subsequent EIR would otherwise be required under CEQA Guidelines section 15162 but the project's new significant environmental effects may be avoided through mitigation measures.**³⁹

This holding follows the line of cases finding that the adequacy of mitigation measures should be analyzed in an environmental review document.⁴⁰

Here, the Revised Project’s construction noise impacts are new and previously unstudied, as the construction of a 95,995 square foot medical office building was not analyzed in the IS/MND. And the Addendum acknowledges these impacts are significant before mitigation.⁴¹ Since the Addendum identifies new and significant impacts, the City must prepare, *at minimum*, a subsequent mitigated negative declaration. If a subsequent mitigated negative declaration is prepared, it must be given the same notice and public review as is required for an initial negative declaration.⁴² But as will be demonstrated elsewhere in these comments, the City will have to prepare an EIR.

³⁷ Addendum, pg. 116.

³⁸ Addendum, pg. 119.

³⁹ *San Mateo Gardens II* at 606, emphasis added.

⁴⁰ *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102; *Lewis v. Seventeenth Dist. Agricultural Assn.* (1985) 165 Cal.App.3d 823, 830; *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1199-1200)

⁴¹ The IS/MND determined that noise impacts from construction of the Approved Project would be less than significant. Not only did the IS/MND not study the construction noise impacts of the Revised Project, but it does not reach the same significance determination as the Addendum.

⁴² 14 Cal. Code Regs. § 15162(d).

b. The Addendum Fails to Disclose the Full Extent of the Revised Project's Noise Impacts

The Addendum states that the noise significance threshold is exceeded if the Project's operations or construction would "exceed the ambient noise level by 5 dB on the premises of the adjacent properties."⁴³ Thus, the higher the ambient noise levels, the harder it is to exceed the noise significance threshold. Bare reliance on this threshold results in both a factually and legally inadequate analysis of the Project's noise impacts.

First, the Addendum relies on misleadingly high ambient noise measurements, thus underestimating the severity of the Revised Project's actual noise impacts. The reason these ambient noise measurements are misleading is that they were collected on February 13, 2020, after the Approved Project became operational.⁴⁴ The IS/MND acknowledges that the Approved Project's operations generate noise:

[s]ources of noise within the parking structure would include engines accelerating, doors slamming, car alarms, and people talking. Noise levels within the parking areas would fluctuate with the amount of automobile and human activity. As the subterranean parking level serving the Proposed Project would be entirely underground and enclosed, noise generated at these levels would likely be imperceptible at ground-level locations on and adjacent to the Project Site. As is typical for parking structures, cars entering and exiting the structure at all hours of the day and night can become a nuisance to occupants of adjacent buildings.⁴⁵

By relying on ambient noise measurements that likely include the parking structure's operational noise, the City masks the impacts of the total noise that will be generated by the Revised Project. The LA City CEQA Thresholds Guide states that the correct analysis is: "would the project result in a[n] [...] increase in ambient noise levels in the project vicinity above levels existing *without the project?*"⁴⁶ Because the medical offices and the parking structure are a single project, the City

⁴³ Addendum, pg. 120; LA CEQA Thresholds Guide, pg. I.2-3.

⁴⁴ Addendum, Appendix B, pg. 17.

⁴⁵ IS/MND, pg. 4.0-72.

⁴⁶ LA City CEQA Thresholds Guide, pg. I.1-1; I.2-1. Emphasis added.
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fails to measure their noise impacts against ambient noise levels existing without the Project.⁴⁷

The IS/MND does not quantify the parking structure's noise, so it is unknown by how much it masks the Revised Project's impacts. In any case, since the Revised Project's noise impacts likely increase ambient noise levels by some degree more than disclosed by the Addendum, the Project may have significant, unmitigated noise impacts. The City thus lacks substantial evidence to conclude that noise impacts are fully mitigated. An EIR must be prepared to evaluate the Revised Project's true impacts on ambient noise levels.

Additionally, the courts have held that reliance on a maximum noise level as the sole threshold of significance for noise impacts violates CEQA because it fails to consider whether the magnitude of changes in noise levels is significant.⁴⁸ In *Keep our Mountains Quiet v. County of Santa Clara*,⁴⁹ neighbors of a wedding venue sued over the County of Santa Clara's failure to prepare an EIR for a proposed project to allow use permits for wedding and other party events at a residential property abutting an open space preserve. Neighbors and their noise expert contended that previous events at the facility had caused significant noise impacts that reverberated in neighbors' homes and disrupted the use and enjoyment of their property.⁵⁰ Similar to the Addendum in this case, the City's CEQA document relied on the noise standards set forth in its noise ordinance as its thresholds for significant noise exposure from the project, deeming any increase to be insignificant so long as the absolute noise level did not exceed those standards.⁵¹ The Court examined a long line of CEQA cases which have uniformly held that conformity with land use regulations is not conclusive of whether or not a project has significant noise impacts⁵² in holding that the County's reliance on the project's

⁴⁷ LA City CEQA Thresholds Guide, pg. I.1-1; I.2-1 ("Would the project result in a[n] [...] increase in ambient noise levels in the project vicinity above levels existing *without the project*?").

⁴⁸ *King & Gardiner Farms, LLC*, 45 Cal.App.5th at 865.

⁴⁹ *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.

⁵⁰ *Id.* at 724.

⁵¹ *Id.* at 732.

⁵² *Id.*, citing *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1338; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881–882; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416 (project's effects can be significant even if "they are not greater than those deemed acceptable in a general plan"); *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354, ("CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan").

compliance with noise regulations did not constitute substantial evidence supporting the County's finding of no significant impacts.⁵³

Similarly, here, the noise threshold used in the Addendum to assess the severity of the Revised Project's noise impacts is Section 112.02 of the LAMC, which prohibits noise from air conditioning, refrigeration, heating, pumping, and filtering equipment from exceeding the ambient noise level on the premises of other occupied properties by more than 5 dB.⁵⁴ The Addendum applies this threshold to the Revised Project's HVAC equipment to conclude that Project operation would not result in significant noise impacts that exceed the threshold.⁵⁵ While the threshold addresses the increase in ambient noise levels over existing noise levels generated at the Project, it fails to assess the severity of noise impacts on surrounding receptors as a result of the increased noise from the Project in conjunction with all relevant sources of noise that impact those receptors. The Addendum's conclusion that noise impacts are less than significant is based on an illusory threshold and is therefore unsupported.

c. The Addendum Fails to Analyze the Total Operational Noise Impacts of the Revised Project.

The City is required to analyze whether the Revised Project would “result in generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.”⁵⁶ However, the City fails to analyze whether the operational noise impacts of the parking structure and medical offices *combined* would be significant.

The Addendum states that the noise significance threshold is exceeded if the Project's operations would “exceed the ambient noise level by 5 dB on the premises of the adjacent properties.”⁵⁷ The Addendum reasons that this threshold would not be exceeded because the Revised Project's heating, ventilation, and air conditioning (“HVAC”) equipment would not be allowed to exceed the ambient noise level by 5 dB

⁵³ *Id.* at 732-734; see also *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 893, as modified on denial of reh'g (Mar. 20, 2020).

⁵⁴ Addendum, p. 120.

⁵⁵ *Id.*

⁵⁶ Addendum, pg. 116.

⁵⁷ Addendum, pg. 120; LA CEQA Thresholds Guide, pg. I.2-3.
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on the premises of the adjacent properties.⁵⁸ As discussed above, this reasoning is unsupported due to the City's reliance on a threshold that does not address the full extent of operational noise impacts. The City's reasoning is further unsupported because the Addendum does not consider whether reducing HVAC noise below the threshold is possible in combination with the noise from the parking structure.⁵⁹ The parking structure is part of the Revised Project, so must be considered concurrently. Since the City has failed to adequately analyze the Revised Project's consistency with operational noise thresholds, an EIR must be prepared.

d. The Addendum Fails to Analyze the Revised Project's Cumulative Noise Impacts

CEQA mandates that a lead agency find a project may have a significant effect on the environment and "thereby require an EIR to be prepared for the project where there is substantial evidence" that the project has "possible environmental effects that are individually limited but cumulatively considerable."⁶⁰ Specifically, CEQA recognizes that incremental effects of an individual projects can be significant when viewed in connection with the effects of past projects, current projects, and probable future projects and therefore requires lead agencies to evaluate cumulative impacts from other projects with similar effects on the environment.⁶¹ "An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable."⁶²

CEQA requires that an adequate discussion of significant cumulative impacts must include either (A) a list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or (B) a summary of projections contained in an

⁵⁸ Addendum, pg. 120; LA CEQA Thresholds Guide, pg. I.2-3.

⁵⁹ 14 Cal. Code Regs. § 15126.4(a)(1)(B) (providing that compliance with a regulatory permit or similar process is sufficient mitigation if compliance with such standards can reasonably be expected, based on substantial evidence, to reduce the impact to a specified performance standard).

⁶⁰ 14 C.C.R. § 15065(a)(3).

⁶¹ *Id.* § 15064(h)(1); see *id.* § 15065(a)(3) (defining "cumulatively considerable" as meaning 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"); *id.* § 15355 ("Cumulative impacts' refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.")

⁶² *Id.* § 15064(h)(1).

adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect.⁶³

Even if the lead agency determines that a project's incremental contribution to a cumulative effect is not cumulatively considerable because the project complies with a previously approved plan or mitigation program, an EIR must be prepared if there is "substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program."⁶⁴ Moreover, "[w]hen 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."⁶⁵

Here, the Addendum acknowledges that "cumulative construction-noise impacts have the potential to occur when multiple construction projects in the local area generate noise within the same time frame and contribute to the local ambient noise environment." However, the Addendum fails to provide a list of related projects that will have construction or operational noise impacts.⁶⁶ And the Addendum fails to otherwise describe or evaluate conditions contributing to a cumulative effect.⁶⁷ Instead, the Addendum summarily states that related projects would implement best management practices and adhere to the City's noise standards.⁶⁸ The Addendum's approach violates CEQA by failing to conduct a cumulative impacts analysis in one of the two authorized ways.⁶⁹

The Addendum's reasoning, in the short analysis it does provide, is also flawed.⁷⁰ The Addendum reasons that because related projects would implement best management practices and adhere to the City's noise standards, there would

⁶³ 14 CCR § 15130(b).

⁶⁴ *Id.* § 15064(h)(3).

⁶⁵ *Id.*; see *id.* § 15130(a) (stating that the lead agency shall describe its basis for concluding that an incremental effect is not cumulatively considerable).

⁶⁶ 14 CCR § 15130(b).

⁶⁷ 14 CCR § 15130(b).

⁶⁸ Addendum, Appendix B, pg. 21.

⁶⁹ 14 CCR § 15130(b).

⁷⁰ 14 Cal. Code Regs. § 15126.4(a)(1)(B) (providing that compliance with a regulatory permit or similar process is sufficient mitigation if compliance with such standards can reasonably be expected, based on substantial evidence, to reduce the impact to a specified performance standard).

not be cumulative impacts.⁷¹ However, in order for a related project to ensure that its noise impacts would not combine with the Revised Project's to exceed noise thresholds, this other project would have to first identify the Revised Project in a list of related projects. This other project would then measure the two projects' combined impacts against a threshold. The Addendum cannot assume that other projects will conduct an analysis that it itself fails to conduct.

In light of the City's failure to analyze cumulative noise impacts, the City lacks substantial evidence to conclude that these impacts will be less than significant. The Addendum acknowledges that the Revised Project's construction noise exceeds noise thresholds before mitigation is applied. However, the Addendum fails to adopt binding mitigation,⁷² and fails to quantify the extent by which mitigation will reduce the Revised Project's noise impacts.⁷³ In combination with construction or operational noise from a related project, it is likely that the Revised Project may result in significant cumulative noise impacts. A subsequent or supplemental EIR must be prepared to analyze these potential impacts.

e. The City Claims to Mitigate the Revised Project's Noise Impacts with Nonbinding, Ineffective Mitigation.

Public agencies must adopt feasible mitigation measures that will substantially lessen or avoid a project's potentially significant environmental impacts and describe those mitigation measures in the CEQA document.⁷⁴ A public agency may not rely on mitigation measures of uncertain efficacy or feasibility.⁷⁵ "Feasible" means capable of successful accomplishment within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.⁷⁶ Mitigation measures must be enforceable through permit conditions, agreements, or other legally binding instruments.⁷⁷ Incorporating

⁷¹ Addendum, Appendix B, pg. 21.

⁷² As is discussed elsewhere in these comments, the Addendum does not include any mitigation measures in a binding, enforceable mitigation monitoring program.

⁷³ Addendum, pg. 119 (The City points to a government report generally stating that muffler systems may reduce construction noise levels by approximately 10 dB or more. But the City provides no project-specific analysis showing that the Revised Project's construction noise will be reduced by this amount.).

⁷⁴ Pub. Res. Code §§ 21002, 21081(a), 21100(b)(3); 14 C.C.R. § 15126.4.

⁷⁵ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727–728.

⁷⁶ 14 C.C.R. § 15364.

⁷⁷ *Id.* § 15126.4(a)(2).

mitigation measures into conditions of approval is sufficient to demonstrate that the measures are enforceable.⁷⁸

Compliance with relevant regulatory standards can sometimes provide a basis for determining that a project will not have a significant environmental impact, but only where compliance with the standards is otherwise required by law.⁷⁹ As one court explained, “a condition requiring compliance with regulations is a common and reasonable mitigation measure and may be proper where it is reasonable to expect compliance.”⁸⁰ The CEQA Guidelines specify that reliance on compliance with a regulatory permit or similar process is sufficient mitigation only if compliance with such standards can reasonably be expected, based on substantial evidence, to reduce the impact to a specified performance standard.⁸¹ The Addendum fails to meet that standard.

Here, the City acknowledges that the Project would have significant noise impacts prior to mitigation, but fails to include mitigation measures in a legally binding instrument. The Addendum finds that the Revised Project’s “construction noise levels would result in a maximum increase of 0.9 dBA above the significance threshold without implementation of regulatory compliance measures.”⁸² The Addendum claims that this impact will be mitigated through regulatory compliance with Section 112.05 of the Los Angeles Municipal Code (“LAMC”), which prohibits the operation of any powered equipment or powered hand tool that produces a maximum noise level exceeding 75 dBA at a distance of 50 feet from the source of the noise between the hours of 7:00 AM to 9:00 PM when the source is located within 500 feet of a residential zone.⁸³ The Addendum states that this standard can be complied with by requiring use of muffling devices on construction equipment.⁸⁴

But compliance with this standard cannot be reasonably expected to reduce noise impacts to less than significant levels. Section 112.05 provides that the aforementioned noise limitations “shall not apply where compliance therewith is technically infeasible.”⁸⁵ If the City determines at a later time that muffling its

⁷⁸ Pub Res. Code § 21081.6(b); *Gray v. County of Madera* (2008) 167 CA4th 1099, 1116.

⁷⁹ *Tracy First v. City of Tracy* (2009) 177 CA4th 912.

⁸⁰ *Oakland Heritage Alliance v. City of Oakland* (2011) 195 CA4th 884, 906.

⁸¹ 14 Cal. Code Regs. § 15126.4(a)(1)(B).

⁸² Addendum, pg. 118.

⁸³ Addendum, pg. 119; LAMC § 112.05.

⁸⁴ Addendum, pg. 119.

⁸⁵ LAMC § 112.05.

construction equipment to levels below LAMC limitations is infeasible, it is released from complying with the LAMC limitations. This determination would be made after the approval of the Addendum, in an unaccountable arena, which is prohibited by CEQA.⁸⁶ Therefore, compliance with Section 112.05 cannot be reasonably expected to reduce noise impacts to less than significant levels. As a result, the Revised Project's significant noise impacts remain unmitigated. An EIR must be prepared, in which the City adopts concrete, noise-reducing measures in a binding, enforceable instrument.

f. The Constructed Portion of the Project May Have Unmitigated Noise Impacts.

The IS/MND determined the Approved Project would have less than significant noise impacts after mitigation. The IS/MND adopted two mitigation measures to reduce the operational noise impacts from cars entering and exiting the parking structure. One of them is Mitigation Measure ("MM") XII-30, which provides "A 6-foot-high solid decorative masonry wall adjacent to residential use and/or zones shall be constructed if no such wall exists."⁸⁷ The Addendum claims this measure has been implemented: the "[p]arking structure has already been constructed and no alteration of parking ramps or walls is included in the Revised Project. Therefore, this mitigation has been implemented and is no longer necessary to implement as part of the Revised Project."⁸⁸

But the Addendum's claim may be inaccurate. Figure 1, below, is a Google Earth photo of the Approved Project, as constructed. Figure 1 shows that the

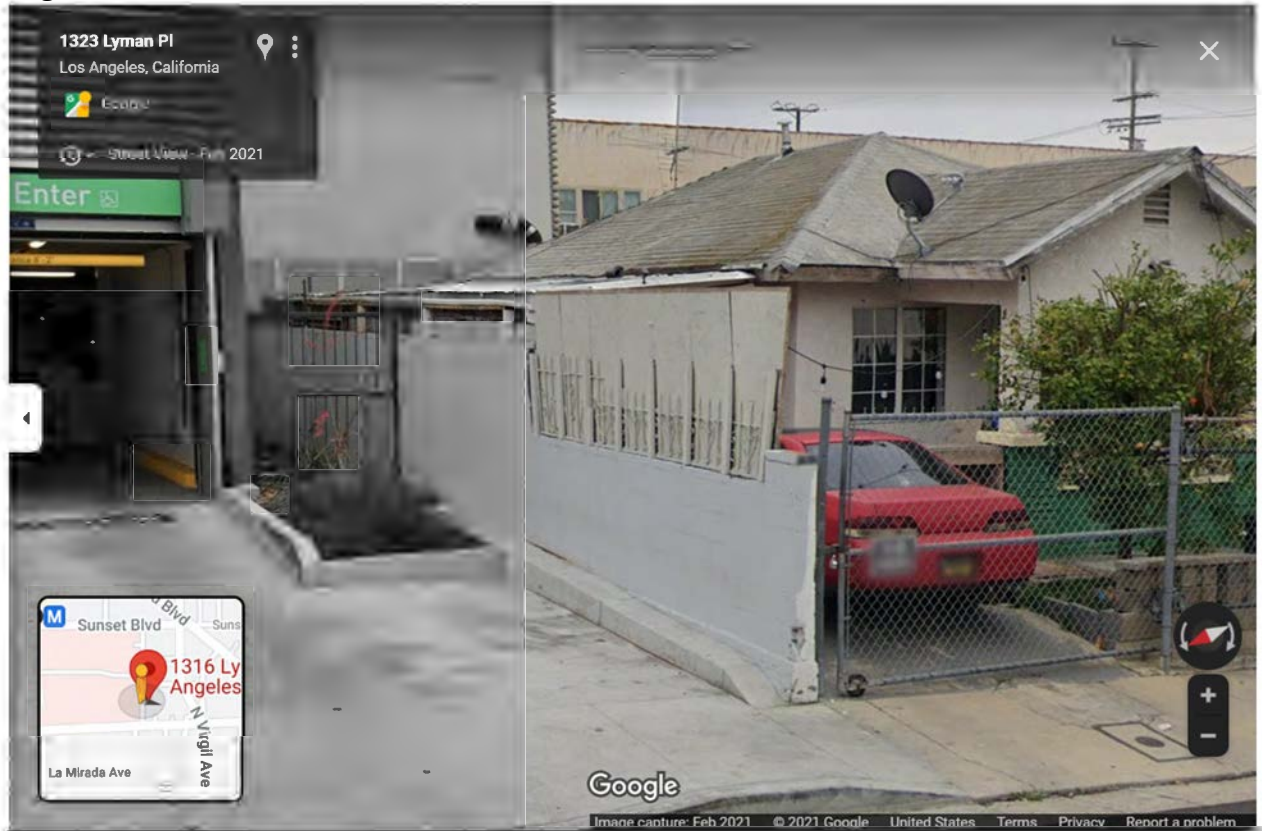
⁸⁶ *Oro Fino Gold Mining Corp. v. County of El Dorado* ("Oro Fino") (1990) 225 Cal.App.3d 872, 882 ("even though the mitigated negative declaration states that noise levels exceeding the applicable City general plan noise standard maximum of 65 decibels are prohibited, there is no evidence of any measures to be taken that would insure that the noise standards would be effectively monitored and enforced vigorously); *id.* at 85 ("One of the purposes of the [EIR] is to insure that the relevant environmental data are before the agency and considered by it prior to the decision to commit [...] resources to the project" [citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84, quoting from *Hanly v. Kleindienst* (2d Cir. 1972) 471 F.2d 823, 837-838 (dis. opn. of Friendly, J.); *Sundstrom v. County of Mendocino* ("Sundstrom") (1988) 202 Cal.App.3d 296, 308-309]. In short, in the absence of overriding circumstances, the CEQA process demands that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena. (*Sundstrom* at pp. 306-309.)").

⁸⁷ IS/MND, pg. 3. The other mitigation measure is MM XII-40, which requires parking ramps to be constructed of textured concrete.

⁸⁸ Addendum, pg. 3.

parking structure's entrance is close to an adjacent single-story residence at 1316 Lyman Ave, Los Angeles. Figure 1 also shows that the wall is not a decorative masonry wall, and is not 6 feet tall through its entire length. It appears that the residents of 1318 Lyman Ave needed to supplement this wall with plywood. It is unknown whether this makeshift barrier was intended to reduce the Project's aesthetic impacts or the significant noise impacts from parking structure entrance. It is also unknown whether the Project Applicant has improved this wall since the date of the February 2021 photo. Nonetheless, the City must consider the possibility that the parking structure's noise impacts on neighboring sensitive receptors are yet unmitigated. Further increases in noise from the Revised Project may exacerbate these impacts. A subsequent or supplemental EIR must be prepared to analyze these impacts.

Figure 1.



g. There is Substantial Evidence Demonstrating that the Revised Project has Significant Noise Impacts that Are More Severe than Previously Analyzed

The City's overall approach in its noise analysis is to rely on purported compliance with regulatory standards. The City claims that the Revised Project's significant construction noise impacts are mitigated through compliance with Section 112.05 of the LAMC. The City points to the same standard to claim the Revised Project's operational impacts (from its HVAC equipment) would not exceed thresholds. Cumulative impacts would also be less than significant because related projects would adhere to the City's noise thresholds. However, as detailed in the sections above, CREED LA has put forth a fair argument that the Revised Project will cause significant noise impacts. Courts require preparation of a subsequent or supplemental EIR under these circumstances.⁸⁹

In *Oro Fino Gold Mining Corp. v. County of El Dorado* ("Oro Fino"),⁹⁰ a mining company applied for a special use permit for drilling holes to explore for minerals.⁹¹ The mining company argued the proposed mitigated negative declaration prohibited noise levels above the applicable county general plan noise standard maximum of 50 dBA and, therefore, there could be no significant noise impact.⁹² The court rejected this argument on two grounds. "Initially, we note that conformity with a general plan does not insulate a project from EIR review where it can be fairly argued that the project will generate significant environmental effects."⁹³ Second, the court reviewed the record and, like the trial court, concluded it contained substantial evidence supporting a fair argument that noise from drilling would exceed the county standard of 50 dBA.⁹⁴ Thus, the court concluded an EIR was required.

In *Citizens for Responsible & Open Government v. City of Grand Terrace* ("Grand Terrace"),⁹⁵ the city approved a 120-unit senior housing facility based on a mitigated negative declaration.⁹⁶ A citizen's group argued substantial evidence

⁸⁹ *San Mateo Gardens I, supra*, 1 Cal.5th at 959.

⁹⁰ (1990) 225 Cal.App.3d 872.

⁹¹ *Id.* at pg. 876.

⁹² *Oro Fino, supra*.

⁹³ *Id.* at pp. 881–882.

⁹⁴ *Id.* at pg. 882.

⁹⁵ (2008) 160 Cal.App.4th 1323.

⁹⁶ *Id.* at pg. 1327.

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supported a fair argument that the project would result in significant environmental impacts, including the impact of noise from air conditioners.⁹⁷ The trial court agreed and issued a writ of mandate requiring the preparation of an EIR.⁹⁸ The appellate court affirmed.⁹⁹

In *Grand Terrace*, the noise element of the city's general plan stated exterior noise levels in residential areas should be limited to 65 dB CNEL.¹⁰⁰ The initial study concluded the facility's air conditioner units would cause noise impacts, but with mitigating measures the project would operate within the general plan's noise standard. Mitigation measures specified as conditions of approval included “shielding” the units, having self-contained condensers that would not transmit noise outside, reducing the number of units near residences, including a buffer setback, planting trees as a noise buffer, etc.¹⁰¹ However, a community member who had been in the HVAC business for 30 years stated that the type of air conditioning units proposed by the project “sound like airplanes.”¹⁰² And at a city council public hearing, community and city council members expressed concern that the air conditioners would be noisy.¹⁰³ The public was not able to analyze numerical data about the noise generated by the air conditioners because the project proponent “did not provide a noise rating on the units”¹⁰⁴

The appellate court cited *Oro Fino* for the principle that “conformity with a general plan does not insulate a project from EIR review where it can be fairly argued that the project will generate significant environmental effects.”¹⁰⁵ The court considered the testimony about the noise generated by the proposed air conditioners, took into account the mitigation measures, and concluded “there is substantial evidence that it can be fairly argued that the Project may have a significant environmental noise impact.”¹⁰⁶

⁹⁷ *Id.*

⁹⁸ *Id.* at pp. 1326–1327.

⁹⁹ *Id.* at pg. 1327.

¹⁰⁰ *Grand Terrace, supra*, 160 Cal.App.4th at pg. 1338.

¹⁰¹ *Id.* at 1339-1340.

¹⁰² *Id.* at 1338-1339.

¹⁰³ *Id.* at 1338.

¹⁰⁴ *Id.* at pp. 1339, 1340.

¹⁰⁵ *Grand Terrace, supra*, at pg. 1338.

¹⁰⁶ *Id.* at p. 1341.

CREED LA has thus far introduced stronger evidence of significant noise impacts than the citizens' group in *Grand Terrace*.

First, these comments show that the Revised Project's significant construction impacts are unmitigated, as the City relies on unenforceable, non-binding mitigation. This is stronger evidence of significant noise impacts than any evidence considered in *Grand Terrace*, as it is uncontested that the Revised Project, without mitigation, exceeds noise thresholds by at least 0.9 dBA.¹⁰⁷

Second, these comments show that the City includes the Approved Project's own operational noise in its ambient noise measures, thus underestimating the Revised Project's increase of ambient noise levels. Ambient noise levels may be exceeded when this error is corrected.

Third, these comments show that the Revised Project's operational noise may exceed noise thresholds, as the City failed to analyze the *combined* operational noise impacts of the parking structure and medical offices. As discussed above, sources of noise within the parking structure would include engines accelerating, doors slamming, car alarms, and people talking. And HVAC systems can "sound like airplanes."¹⁰⁸ Combined, there may be a significant operational noise impact. This noise impact will be acutely felt by the sensitive receptors adjacent to the building.¹⁰⁹ As in *Grand Terrace*, we are not able to calculate whether there is a quantitative exceedance of City noise thresholds because the environmental document does not quantify these impacts. And as in *Grand Terrace*, we are not required to generate such data ourselves to demonstrate an EIR is necessary.¹¹⁰

Fourth, the Revised Project may already have unmitigated noise impacts on the sensitive receptors at 1316 Lyman Ave. Not only did the Approved Project not build a decorative masonry wall as stated in the IS/MND, the wall as constructed is not 6 feet tall through its entire length. The fact that the residents of 1316 Lyman Ave needed to supplement this wall with plywood suggests that additional noise

¹⁰⁷ Addendum, pg. 118.

¹⁰⁸ *Id.* at 1338-1339.

¹⁰⁹ Adjacent to the Project site is a single-story residence at 1316 Lyman Ave, Los Angeles.

¹¹⁰ *Grand Terrace, supra*, at pg. 1341 ("Although there was no evidence as to the actual noise rating of the individual air conditioner units or of the actual noise level caused by the units en masse, there was nevertheless a sufficient basis for concluding that, even with the mitigated measures in place, there was enough evidence to support a fair argument that the Project's noise from 20 or more noisy air conditioners would have a significant environmental impact").

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from the Revised Project would have significant impacts. This evidence is analogous to the testimony at the *Grand Terrace* city council public hearing.¹¹¹

Therefore, a subsequent or supplemental EIR must be prepared.

B. The Addendum Fails to Disclose Potentially Significant Health Risks from Construction Emissions that Are More Severe than Previously Analyzed

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."¹¹² 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."¹¹³

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.¹¹⁴ In *Bakersfield Citizens for Local Control v. City of Bakersfield* ("*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."¹¹⁵ And in *Sierra Club v. County of Fresno* ("*Sierra Club*"), the Supreme Court of California disapproved of an EIR that failed to compare the health effects from exposure to ozone emissions against applicable thresholds.¹¹⁶ The Court held that it is insufficient to merely state that "exposure to ambient levels of ozone ranging from 0.10 to 0.40 [parts per million of ozone] has been found to significantly alter lung functions" – the EIR must also compare the Project's impacts against this threshold.¹¹⁷

¹¹¹ *Id.* at 1338.

¹¹² *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

¹¹³ *Id.* at 518.

¹¹⁴ *Id.* at 518–520; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

¹¹⁵ *Bakersfield* at 1220.

¹¹⁶ (2018) 6 Cal.5th 502, 517

¹¹⁷ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519.

The Addendum analyzes the Revised Project's health risks from construction activities in a paragraph, concluding impacts are less than significant:

Project construction would result in short-term emissions of diesel particulate matter, which is a TAC. Off-road heavy-duty diesel equipment would emit diesel particulate matter over the course of the construction period. Sensitive receptors are located adjacent to the Project, as shown in Figure 2. Localized diesel particulate emissions (strongly correlated with PM_{2.5} emissions) would be minimal and would be substantially below localized thresholds, as shown in Table 11. Project compliance with the CARB anti-idling measure, which limits idling to no, more than 5 minutes at any location for diesel-fueled commercial vehicles, would further minimize diesel particulate matter emissions in the Project area.¹¹⁸

This analysis fails to meet the informational standards articulated in *Bakersfield* and *Sierra Club*. The Addendum fails to disclose or explain the applicable health risk threshold – 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.¹¹⁹ The Addendum also fails to conduct a quantified health risk analysis (“HRA”) to measure the Project's TAC emissions and resultant health impacts to sensitive receptors. The Addendum accordingly fails to compare these health impacts against the applicable significance threshold, in conflict with the holding of *Sierra Club*.¹²⁰ As in *Bakersfield*, after reading the Addendum, the public is left with little understanding of the Revised Project's health consequences.¹²¹

The failure to prepare an HRA also conflicts with scientific authority. California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (“OEHHA”)¹²² guidance sets a recommended threshold for

¹¹⁸ Addendum, Appendix A, pg. 22.

¹¹⁹ South Coast Air Quality Management District (“SCAQMD”), Air Quality Analysis Handbook, Air Quality Significance Thresholds, available at <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>.

¹²⁰ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1219-20.

¹²¹ *Bakersfield* at 1220.

¹²² 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>.

preparing an HRA of a construction period of two months or more.¹²³ The Addendum acknowledges construction will take at least two months.”¹²⁴ Specifically:

[i]t will approximately take one (1) month to prepare the anchor bolts for retrieval of the steel columns and another one (1) month to complete the erection of the steel and welding. A 100-ton mobile crane will be utilized for steel erections, which is contingent upon the size of the heaviest piece of steel structure. After the completion of the steel structure, the fire proofing, concrete decking, exterior cladding, and roofing works will be followed in order to make dry-in of the building. A 25-ton mobile crane and the concrete truck will be staged on De Longpre for material hoisting and concrete decking work. This phase is anticipated to be completed in eight (8) months. The build-out phase consists of mechanical, electrical, plumbing, elevator, and interior finishing work, as well as medical imaging equipment installation, which will last for approximately 14 months.¹²⁵

This passage from the Addendum shows that heavy equipment, including a 100-ton and 25-ton mobile crane, will be utilized in construction for at least two months. Therefore, OEHHA guidance supports the preparation of a construction HRA, in addition to the CEQA mandate.

In addition to its failure to disclose health risks, the Addendum does not adopt all available measures to reduce health risks to nearby sensitive receptors. Some of these sensitive receptors are directly adjacent to the Project site.¹²⁶ Due to this proximity, these sensitive receptors may be acutely impacted by even relatively low emissions of TACs. Despite this heightened risk, the Addendum states that heavy-duty diesel equipment engines would merely meet Tier 3 standards. Tier 3 equipment emits more TACs than other commercially-available equipment. The Revised Project should use Tier 4 Final equipment to mitigate health risks the Addendum may have failed to detect as a result of its truncated health risk analysis.

¹²³ 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”), pp. 8-18.

¹²⁴ Addendum, Appendix A, pg. 19.

¹²⁵ Addendum, Appendix A, pg. 20.

¹²⁶ Addendum, Appendix A, Figure 2.

In light of the Revised Project’s undisclosed potential health risks, the City must prepare an EIR which includes a construction HRA.

C. The City’s Air Quality Analysis Fails to Disclose Back-Up Generator Emissions, thus Underestimating Potentially Significant Air Quality, GHG, and Health Impacts Resulting from New Project Features.

CEQA Guidelines Section 15378 defines “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”¹²⁷ Courts have explained that a complete description of a project must “address not only the immediate environmental consequences of going forward with the project, but also all “*reasonably foreseeable* consequence[s] of the initial project.”¹²⁸ “If a[n]...EIR...does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decision-making cannot occur under CEQA and the final EIR is inadequate as a matter of law.”¹²⁹

The Addendum fails to disclose whether the Revised Project would require back-up generator, which are commonly used for medical facilities and have been identified in other medical facility projects analyzed by the City. Whereas the Approved Project – a parking structure – would not be reasonably expected to require a back-up generator, medical facilities often utilize back-up generators to minimize the consequences of a power outage. Use of back-up generators is required by law for many medical facilities.¹³⁰ Such generators can significantly impact air quality, GHG emissions, and public health through DPM emissions.¹³¹ Therefore, if

¹²⁷ CEQA Guidelines § 15378.

¹²⁸ *Laurel Heights I*, 47 Cal. 3d 376, 398 (emphasis added); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

¹²⁹ *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

¹³⁰ See 22 CCR § 70841 (requiring hospitals to maintain emergency generators); § 72657 (requiring nursing homes to maintain emergency electrical systems in safe operating condition).

¹³¹ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps> (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at <https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff> (“When electric utilities de-energize their electric lines, the demand for back-up L5740-003acp

the Project Applicant can reasonably foresee use of a back-up generator, the Addendum's failure to disclose such a generator is a failure to disclose all "reasonably foreseeable consequence[s] of the initial project."¹³²

These consequences may include significant air quality, GHG emissions, and public health impacts. According to SCAQMD Rules 1110.2¹³³ and 1470,¹³⁴ back-up generators are allowed to operate for up to 200 hours per year, and operate for maintenance up to 50 hours per year.

Further, a back-up generator would operate during unscheduled events like Public Safety Power Shutoff ("PSPS") events and extreme heat events ("EHEs"). Dr. Clark's comments show that although such events are unscheduled, they occur frequently enough in California that they are reasonably foreseeable.¹³⁵ For example, the total duration of PSPS events in California lasted between 141 hours to 154 hours in 2019.¹³⁶ In 2021, two EHEs have been declared so far, which lasted 120 hours combined.¹³⁷ Dr. Clark explains that these two EHEs would have tripled the calculated yearly DPM emissions from the Project.¹³⁸ These conditions are expected to increase in severity.¹³⁹ Therefore, a failure to consider this source of emissions drastically underestimates the Revised Project's air quality, GHG, and public health impacts. A subsequent or supplemental EIR would have to be prepared to analyze these potentially significant impacts.

power increases. This demand for reliable back-up power has health impacts of its own. Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts)").

¹³² *Laurel Heights I*, 47 Cal. 3d 376, 398.

¹³³ Available at <http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1110-2.pdf>.

¹³⁴ Available at <https://www.aqmd.gov/docs/default-source/rule-book/reg-xiv/rule-1470.pdf?sfvrsn=4>.

¹³⁵ Clark, pg. 4.

¹³⁶ *Id.*, pg. 5.

¹³⁷ *Id.*, pg. 6.

¹³⁸ *Id.*, pg. 6.

¹³⁹ OEHHA, Extreme Heat Events, February 11, 2019, <https://oehha.ca.gov/epic/changes-climate/extreme-heat-events> (showing that frequency of extreme heat events is increasing); NASA Earth Observatory, California Heatwave Fits a Trend, September 6, 2020, <https://earthobservatory.nasa.gov/images/147256/california-heatwave-fits-a-trend> (showing trends toward longer and more intense heatwaves in Southern California).

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D. The Revised Project Creates Potentially Significant Greenhouse Gas Emissions that are Specific to the Project's New Uses and are More Severe than Previously Analyzed.

The Addendum states that the Revised Project would have less than significant GHG impacts because it complies with the LA Green Building Code.¹⁴⁰ However, courts have held that a determination that regulatory compliance will be sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. For instance, in *Californians for Alternatives to Toxics v. Department of Food & Agriculture*, the court set aside an EIR for a statewide crop disease control plan because it did not include an evaluation of the risks to the environment and human health from the proposed program but simply presumed that no adverse impacts would occur from pesticides properly registered with the California Department of Pesticide Regulation. The Addendum similarly fails to conduct a project-specific analysis of potential impacts and the effect of regulatory compliance. Substantial evidence shows that the Revised Project may have significant GHG emissions.

To begin with, the Revised Project's GHGs exceed SCAQMD draft thresholds. In 2008, SCAQMD released draft guidance regarding interim CEQA GHG significance thresholds.¹⁴¹ With its October 2008 document, SCAQMD proposed the use of a percent reduction target to determine significance of commercial/residential projects that emit greater than 3,000 MTCO₂e per year. Under this proposal, commercial/residential projects that emit fewer than 3,000 MTCO₂e per year would be assumed to have a less-than-significant impact on climate change. SCAQMD has yet to formally adopt this or other thresholds for commercial/residential projects. The Addendum states that the Revised Project's GHG emissions are 3,557.65 MTCO₂e per year, which exceeds the SCAQMD threshold.¹⁴² Although this threshold has not yet been formally adopted, the fact that some scientific authorities view the Revised Project's emissions as significant constitutes project-specific, substantial evidence that an EIR must be prepared. The bare proposition that the Revised Project would comply with the LA Green Building Code does not address this substantial evidence.

¹⁴⁰ Addendum, pg. 81.

¹⁴¹ SCAQMD, Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold, Attachment E, available at [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgattachmente.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgattachmente.pdf?sfvrsn=2).

¹⁴² Addendum, pg. 82, Table 4.8-1.
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There is also substantial evidence showing the Revised Project's GHG emissions are likely higher than disclosed. As discussed in these comments, the Addendum does not disclose whether a back-up generator would be part of the Revised Project. Also, the GHG emissions the Addendum attributes to energy consumption seem incorrect: the Addendum claims that the Approved Project's energy consumption would result in 956.33 MTCO₂e/year, but the Revised Project's energy consumption would result in 802.56 MTCO₂e/year.¹⁴³ The Addendum does not explain that the GHGs of a parking structure are likely to be higher than those of a parking structure combined with medical facilities.

The Revised Project's potentially significant GHG emissions (at least 3,557.65 MTCO₂e/year) are substantial increases over the Approved Project's emissions (976.95 MTCO₂e/year), and now exceed a SCAQMD draft threshold.¹⁴⁴ This increase is a result of the substantial changes proposed in the Revised Project, which would now involve vehicle trip generation, water consumption, wastewater generation, and increased energy needs. Since this potentially significant impact was not evaluated in the IS/MND or Addendum, a subsequent or supplemental EIR must be prepared.

E. The Addendum Fails to Analyze the Revised Project's Potentially Significant Energy Consumption Which is the Result of New Project Features and Is More Severe than Previously Analyzed.

The CEQA Guidelines state that an environmental review document should determine whether a Project results in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation.¹⁴⁵ The Addendum's approach to this analysis is to assert that the Revised Project would be built and operated in accordance with the applicable State Building Code Title 24 regulations and City of Los Angeles Green Building code. However, Appendix F of the CEQA Guidelines lists several disclosures relating to energy consumption that should be included in an environmental document. The Addendum fails to make these disclosures.

Appendix F states that the project description should identify energy-consuming equipment and processes used during construction and operation of the

¹⁴³ Addendum, pg. 82, Table 4.8-1.

¹⁴⁴ Addendum, pg. 82, Table 4.8-1.

¹⁴⁵ CEQA Guidelines, Appendix F, subd. I
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project, as well as discuss their energy intensiveness.¹⁴⁶ The Addendum fails to disclose any of the energy-intensive medical equipment that is reasonably expected to be utilized at the Revised Project. This energy consumption was also not analyzed in the IS/MND because the Approved Project did not include medical facilities.

Appendix F states that the project description should communicate the “[t]otal energy requirements of the project by fuel type and end use.”¹⁴⁷ The Addendum fails to quantify the Revised Project’s energy consumption.

Appendix F explains that the project description should identify “[e]nergy conservation equipment and design features.”¹⁴⁸ The IS/MND stated the Approved Project would implement “a concrete top roof deck that will provide a cool roof to reduce the urban heat island effect.”¹⁴⁹ However, as the Revised Project will be built on top of the Approved Project, the Addendum must disclose whether the Revised Project would include a cool roof to conserve energy.

Because the IS/MND fails to communicate basic facts of the Project’s energy consumption, an EIR is necessary to fully and accurately describe the Project and its energy use impacts.

F. The Addendum Requests an Exception from an Inapplicable Section of the Specific Plan.

As part of the Revised Project, the Applicant seeks a Specific Plan Exception from Section 9.E.3 of the Vermont/Western Transit Oriented District (Station Neighborhood Area) Specific Plan (“Specific Plan”).¹⁵⁰ The requested exception would allow for zero vehicle parking spaces for the Revised Project. However, the Applicant is requesting an exception from a provision that does not apply to hospitals or medical uses. Section 9.E.3 provides:

Notwithstanding the contrary provisions of Section 12.21 A 4 of the Code and regardless of the underlying zone, the following parking standards shall

¹⁴⁶ *Id.*, subd. (A)(1) (“Energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project”).

¹⁴⁷ CEQA Guidelines, Appendix F, subd. (A)(2).

¹⁴⁸ *Id.*, subd. (A)(3).

¹⁴⁹ IS/MND, pg. 4.0-113.

¹⁵⁰ Addendum, pg. 24.

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apply to Projects with commercial uses, **other than Hospital and Medical Uses**: (i) the maximum number of off-street parking spaces which may be provided shall be limited to two parking spaces for each 1,000 square feet of combined floor area of commercial uses contained within all buildings on a lot; (ii) a maximum of 50% of the required non-residential parking spaces may be provided off-site, but within 1,500 feet of the lot for which they are provided.¹⁵¹

Since the Revised Project is a medical use, Section 9.E.4 appears to be the applicable provision:

Hospital and Medical Uses. Notwithstanding the contrary provisions of Section 12.21 A 4 (d) of the Code, **the following parking standards shall apply to Hospital and Medical Use Projects**: (i) hospitals shall provide a minimum of one parking space for each patient bed for which the hospital is licensed, and a maximum of two parking space for each patient bed for which the hospital is licensed; (ii) a maximum of 50% of the required hospital parking spaces may be provided off-site, but within 1,500 feet of the lot for which they are provided; and (iii) off-site parking facilities may be provided pursuant to leases of existing parking spaces for at least a twenty-year term, in order to provide the parking required by this Specific Plan, and these leased spaces may be shared parking operated or maintained by more than one owner or lessee.¹⁵²

Since the Addendum does not request an exception from this particular provision, the Revised Project must comply with it. It should be noted that the Specific Plan provides that whenever it contains more stringent provisions than the LAMC, the Specific Plan shall prevail and supersede the applicable provisions of the Code.¹⁵³ The applicable provision of the Code is LAMC Section 12.21 A.3(x)(3), which requires providing two parking spaces per 1000 square feet of floor area.

III. CONCLUSION

The City has failed to satisfy CEQA's procedural and evidentiary standards for the preparation of an addendum. As explained above, the Addendum fails to

¹⁵¹ Specific Plan, Section 9.E.3 [emphasis added].

¹⁵² Specific Plan, Section 9.E.4 [emphasis added].

¹⁵³ Specific Plan, Section 3.B.

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adequately analyze and mitigate the Revised Project's noise, air quality, GHG, and public health impacts. For these reasons, we urge the City to prepare a subsequent or supplemental EIR for the Project before the City considers approval of the Revised Project. We thank you for the opportunity to provide these comments on the Addendum.

Sincerely,



Aidan P. Marshall

APM:acp

Attachment

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