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May 2, 2023

VIA EMAIL AND ONLINE SUBMISSION

ATTN: Chair Marqueece Harris-Dawson and Councilmembers
Planning and Land Use Management Committee
Los Angeles City Council
Portal: LACouncilComment.com
Email: clerk.plumcommittee@lacity.org

VIA EMAIL

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**Re: Agenda Item 14 –Appeal of Central Area Planning Commission
Approvals for the HPMC Building Project (Case No. APCC-2020-
1764-SPESPP-SPR, Environmental Case No. ENV-2015-310-
MND-REC1)**

Dear Chair Harris-Dawson, Honorable Councilmembers, Ms. Kahen, Ms. Knox-Jones, and Mr. Hernandez:

On behalf of the **Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”)**, we submit these comments in support of our appeal of the Central Area Planning Commission’s (“Commission”) approval of the HPMC Building Project (Case No. APCC-2020-1764-SPESPP-SPR, Environmental Case No. ENV-2015-310-MND-REC1) (“Project”). The Commission’s approvals included adoption of an Addendum to the Virgil Avenue Parking Structure Project Mitigated Negative Declaration (“MND”), a Project Permit Compliance, Specific Plan Exceptions, Site Plan Review, conditions of approval, and findings.

On October 18, 2021, we submitted comments on the Project, explaining that the Project would have new and more severe noise, air quality, greenhouse gas, and public health impacts than previously analyzed in the Virgil Avenue Parking

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Structure Project MND, and that the City lacked substantial evidence to make the findings necessary to approve the Project. On November 23, 2021, the Commission issued a Letter of Determination (“LOD”) approving the Project. On December 7, 2021, CREED LA filed an appeal of the Project’s approval to the Los Angeles City Council. The City has since prepared a staff report containing responses to our comments. The staff report relies on a letter from Meridian Consultants, the Applicant’s environmental consultant, to dismiss the issues raised in the Appeal and assert that the Project’s environmental review was legally adequate.

But as discussed herein, the staff report’s analysis of the issues raised in the Appeal is incomplete and fails to adequately address the Project’s new and more severe noise, air quality, greenhouse gas, and public health impacts that are not addressed in the Addendum. These impacts are not simply “some changes or additions” to the prior MND– they are impacts from a completely different land use than analyzed in the MND (a 95,995 square foot medical office project, as opposed to a parking structure). As a result, the City’s decision to prepare an addendum for the Project, rather than a subsequent or supplemental EIR or MND, is not supported by substantial evidence. The Commission thus abused its discretion and failed to proceed in the manner required by law by approving the Project in reliance on a deficient CEQA document and without substantial evidence to support the approval findings.¹

We urge the Planning and Land Use Management Committee to uphold this appeal, vacate the Planning Commission’s approval of the Project, and remand the Project to staff to prepare a subsequent EIR for the Project before the City considers approval of the Project.

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 and public service 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.

¹ Code Civ. Proc § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

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.

II. THE STAFF REPORT FAILS TO ADEQUATELY ADDRESS THE PROJECT'S NEW AND MORE SEVERE ENVIRONMENTAL IMPACTS

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

In our initial comments, we explained that the Addendum itself identifies new and significant construction noise impacts than previously analyzed, precluding reliance on an Addendum.² Specifically, whereas the original project's MND found that construction noise impacts would be less than significant, 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."³

The staff report attempts to reverse course by arguing that the Addendum's conclusion was in error and should be disregarded, as it applies a 5 decibel construction noise significance threshold from the now-discontinued 2006 Los Angeles CEQA Thresholds.⁴ But contrary to the staff report's argument, lead agencies have discretion to devise a significance threshold on a project-by-project basis, so long as it is supported by substantial evidence.⁵ The Addendum explains the basis for selecting this threshold, which it asserts is supported by substantial evidence. Thus, since the Addendum applies a project-specific significance threshold, the City cannot subsequently call for that analysis to be disregarded.

The Addendum applies the 5-decibel construction noise threshold throughout the noise impacts analysis, showing that that the Addendum clearly intended to

² CEQA Guidelines § 15162(a)(1)-(3).

³ Addendum, pg. 118.

⁴ Staff Report, Response A1-1, Meridian Consultants letter, Response to Comment 4 ("RTC 4").

⁵ *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 206; *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th; *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 732-734.

814, 893, as modified on denial of reh'g (Mar. 20, 2020).

rely on the 5 decibel threshold.⁶ The City cannot simply walk away from its own conclusions because they demonstrate significant impacts.

Moreover, if the City now contends that the Addendum's noise threshold was incorrect and unsupported, the City is acknowledging that the Addendums' entire noise analysis that relies on this threshold was similarly flawed and unsupported. The Addendum is the only CEQA document prepared for the Project. Therefore, by the City's own statements, the Addendum is inadequate, and the new and significant construction noise impacts identified in the Addendum have not been accurately analyzed or mitigated. The City must prepare a new CEQA document which accurately analyzes and mitigates the Project's noise impacts.

1. The Staff Report's New Noise Threshold Is Unsupported

The staff report argues that, instead of the 5 decibel threshold applied in the Addendum, the Project's construction noise impacts would not be significant unless they exceed 75 dBA, and compliance with that threshold would be technically feasible.⁷ However, as explained in our initial comments, 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.⁸ The new 75 dBA threshold described in the staff report suffers from precisely this flaw.

In *King & Gardiner Farms*, a lead agency "determined the significance of [noise] impacts based solely on whether the estimated ambient noise level with the project would exceed the 65 decibels threshold set forth in the County's general plan.... Based on prior case law, we conclude the magnitude of the noise increase must be addressed to determine the significance of change in noise levels."⁹ Here, sole reliance on a 75 decibel maximum noise threshold does not account for the magnitude of changes in noise levels, whereas the Addendum's reliance on a 5 decibel increase threshold used in the Addendum would. Thus, the staff report's

⁶ Addendum, pg. 119 ("As shown In Table 4.132-2 above, noise from construction equipment without this regulatory compliance would be less than 75bBA at the nearest residences and **would only exceed ambient noise at closer locations by 6dB or less.**"); ("The noise level increases from truck trips **would be below the significance threshold of 5 dBA.**"); see also 216 S. Spring Street Project Categorical Exemption, CEQA No. ENV-2020-7847-CE, pg. 61 (the Project's construction noise impacts are significant if they exceed 75 dBA at a distance of 50 feet from the Project site, and would not exceed ambient noise levels by more than 5 dBA at nearby sensitive receptors.).

⁷ Los Angeles Municipal Code (LAMC), Sections 41.40, 112.05.

⁸ *King & Gardiner Farms, LLC*, 45 Cal.App.5th at 865; *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.

⁹ *King & Gardiner Farms, LLC*, 45 Cal.App.5th at 830.

recommendation to disregard analysis in the Addendum does not comply with CEQA.

B. The Staff Report Fails to Correct the Addendum’s Reliance on Misleadingly High Ambient Noise Measurements

CREED LA’s initial comments on the Addendum explained that the Addendum relies on misleadingly high ambient noise measurements. Specifically, by relying on ambient noise measurements that include the parking structure’s operational noise, the City masks the impacts of the total noise that will be generated by the Revised Project. This approach is impermissible because the Addendum effectively treats the Revised Project as a separate project than the Approved Project, whereas an Addendum is only permissible for projects seeking minor modifications.¹⁰ The ambient noise analysis must be revised to eliminate the effects of the Project’s own noise.

In Response to Comment No. 5, the City argues that the 2006 Los Angeles CEQA thresholds have been discontinued, and that the only applicable standards for noise are those in the LAMC. The City’s response does not relate to the issue identified in our comments, as even the LAMC noise standards require an evaluation of ambient noise. As stated in Response to Comment No. 5:

“For stationary sources, the Project would be required to comply with 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 dBA... Regarding operation, changes in traffic noise are generally audible if there is a 3 dBA or greater increase” [emphasis added].

Since the Addendum impermissibly includes the Project’s own noise in the ambient noise measurements, the City underestimates the Project’s noise impacts, fails to meet CEQA’s informational standards for noise analysis, and lacks substantial evidence for the Addendum’s conclusion that the Project’s noise impacts are not significant. The City must correct these errors in a subsequent EIR.

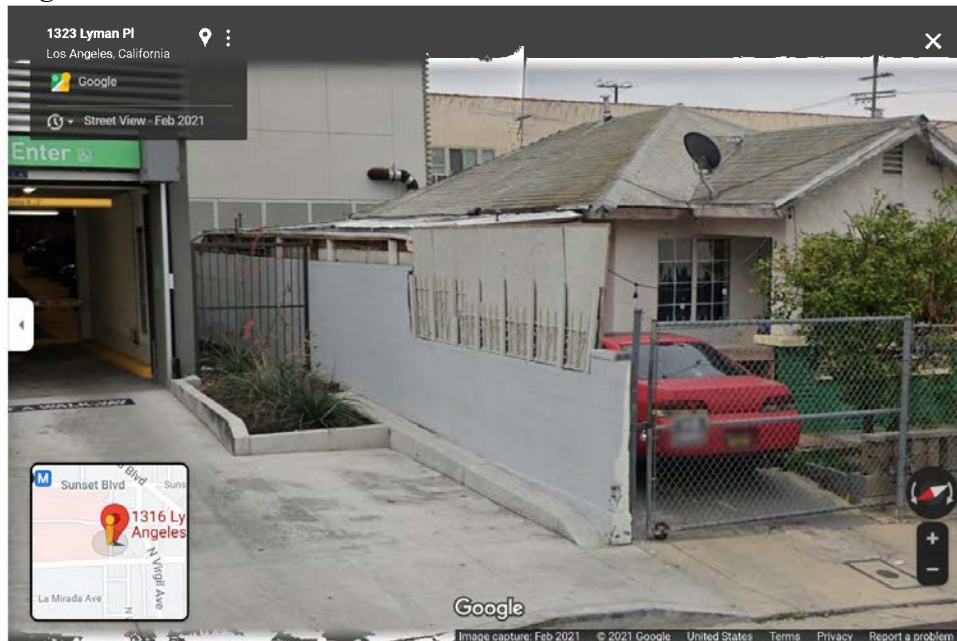
C. The Staff Report Fails to Address the Project’s Failure to Comply with an Operational Mitigation Measure

CREED LA’s initial comments noted that the original MND adopted Mitigation Measure (“MM”) XII-30, which provides “A 6-foot-high solid decorative

¹⁰ Cal. Pub. Resources Code § 21166.

masonry wall adjacent to residential use and/or zones shall be constructed if no such wall exists.”¹¹ The Addendum claims this measure has been implemented.¹² But Figure 1 from CREEED LA’s initial comments (pasted below) shows that the wall has not been constructed. The wall is not a decorative masonry wall, is not 6 feet tall through its entire length, and the residents of 1316 Lyman Ave supplemented this deficient wall with plywood.

Figure 1.



The City argues that the Project is in compliance with MM XII-30, reasoning: “the portions of the original wall that predate construction, including the portion adjacent to the front of the home’s driveway, may be less than 6 feet in height, as they were not required to be installed by Mitigation Measure MMXII-30.”¹³ The City’s interpretation of MMXIII-30 misinterprets the text of the measure, and fails to achieve the measure’s purpose. MM XIII-30 requires a 6-foot-high solid decorative masonry wall be constructed “**if no such wall exists.**” The word “such” refers to the 6-foot decorative masonry wall described in the measure. Here, a 6-foot tall wall does not exist, so the City was required to construct one. The City’s strained interpretation of this measure fails to comply with the plain language of the measure, and fails to achieve its goal of mitigating noise impacts on a

¹¹ IS/MND, pg. 3.
¹² Addendum, pg. 3.
¹³ Meridian letter, RTC 9.

residential sensitive receptor. Additionally, the wall the Project did construct lacks any decorative features, in further violation of the mitigation measure.

D. The Staff Report Fails to Correct the Addendum's Failure to Disclose Health Risks from Construction Emissions

CREED LA's initial comments explained that the City failed to adequately disclose the health risks from human exposure to Diesel Particulate Matter ("PDM") emitted during the Project's construction. In summary, DPM would be emitted during construction by heavy equipment and diesel trucks, and during operations by the potential backup generator.¹⁴ DPM is a type of Toxic Air Contaminant ("TAC"). DPM has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death. Our comments explained that CEQA requires the City to disclose 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.¹⁵ Our comments concluded that without a health risk analysis, the City did not adequately disclose the Project's health risks.

The staff report incorrectly argues that a health risk analysis is not required because it is not directly required by the South Coast Air Quality Management District ("SCAQMD"), and that Risk Assessment Guidelines of the Office of Environmental Health Hazard Assessments ("OEHHA") are not binding on the Project ("the OEHHA document provides guidance for how to address cancer risks from short-term projects if a local agency chooses to do so but does not state that all short-term projects should be evaluated in this way").¹⁶ The staff report's analysis is flawed because the requirement to analyze and disclose the Project's health risks is a legal requirement of CEQA, one that is independent of SCAQMD or OEHHA rules. CREED LA's comments discuss OEHHA guidance to demonstrate how health risk impacts are analyzed. The staff report does not address the legal authority discussed in our comments that sets forth the requirement to disclose and analyze health risks.

The staff report incorrectly suggests that health risks are analyzed through Localized Significance Thresholds ("LSTs").¹⁷ LSTs are based on the number of pounds of emissions per day that can be generated by a project that would cause or

¹⁴ SCAQMD, Fact Sheet on Emergency Backup Generators, <http://www.aqmd.gov/home/permits/emergency-generators> ("Most of the existing emergency backup generators use diesel as fuel").

¹⁵ *Id.* at 518–520; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

¹⁶ Staff report, Response A1-1; Meridian Letter, RTC 11.

¹⁷ *Id.*

contribute to adverse localized air quality impacts. The City's reliance on LSTs is misplaced, as the purpose of LSTs is not to represent health risk significance thresholds for TACs such as DPM. Rather, LSTs represent the maximum emissions from a project that will not cause or contribute to an exceedance of the most stringent applicable federal or state ambient air quality standard, and are developed based on the ambient concentrations of that pollutant for each source receptor area.¹⁸

DPM is not a criteria pollutant for which there is an applicable federal or state ambient air quality standard. The seven criteria air pollutants are: ozone (O₃); carbon monoxide (CO); nitrogen dioxide (NO₂); sulfur dioxide (SO₂); PM₁₀; PM_{2.5}; and lead (Pb). Conversely, DPM is made of dozens of constituent particles that cause cancer. For example, the California Air Resources Board explains that DPM is composed of carbon particles and numerous organic compounds, including over 40 known cancer-causing organic substances.¹⁹ Examples of these chemicals include polycyclic aromatic hydrocarbons, benzene, formaldehyde, acetaldehyde, acrolein, and 1,3-butadiene. Diesel exhaust also contains gaseous pollutants, including volatile organic compounds and oxides of nitrogen (NO_x). Accordingly, CARB has identified DPM as a "toxic air contaminant" with no threshold level of exposure for adverse health effects determined. These actions allow for the implementation of control measures at levels below the ambient concentrations specified for these pollutants. In sum, LSTs were not designed to reflect the unique health risks of toxic air contaminants like DPM.

Because the Addendum does not include analysis disclosing health risks from exposure to DPM, the analysis fails to meet CEQA's informational standards, and the City's significance finding is not supported by substantial evidence. The City must prepare an EIR which includes a construction HRA.

E. The Project Creates Potentially Significant Greenhouse Gas Emissions that Are More Severe than Previously Analyzed.

In our initial comments, we explained that the Addendum fails to adequately analyze the Project's potentially significant GHG emissions that are significantly higher than previously analyzed. The Revised Project's expected GHG emissions (at least 3,557.65 MTCO_{2e}/year) are substantial increases over the Approved Project's emissions (976.95 MTCO_{2e}/year), yet the Addendum's analysis reasons that GHG impacts are less than significant if the Project complies with the LA Green Building

¹⁸ <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/final-lst-methodology-document.pdf?sfvrsn=2>.

¹⁹ <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health>.

Code.²⁰ Courts have held that the expected compliance with building standards is not sufficient analysis of a Project's impacts.²¹ To demonstrate the magnitude of the increase in emissions proposed by the Revised Project, our comments discuss how the Revised Project's emissions exceed thresholds proposed by SCAQMD (3,000 MTCO_{2e}/year).

In response, the staff report correctly states that these draft thresholds are not binding on the Project, and discusses the CEQA Guidelines' criteria for determining significance:

- (1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;
- (2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.
- (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.²²

The staff report explains that the City has discretion to set significance thresholds, and elected to focus on the Project's consistency with statewide, regional, and local plans.

But the threshold is inadequate because it fails to address the disparities between the Approved Project and the Revised Project. Both the Approved Project and the Revised Project might be consistent with statewide, regional, and local plans, but they are different land uses with dramatically different emissions. The Approved Project is a parking structure that would generate 976.95 MTCO_{2e}/year), whereas the Revised Project is an office project that would generate at least 3,557.65 MTCO_{2e}/year. By only considering consistency with GHG plans, the Addendum fails to adequately consider whether "[s]ubstantial 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."²³ Here, the Revised Project's emissions are more than 3.5 times greater than previously analyzed, and include emissions from completely

²⁰ Addendum, pg. 81.

²¹ *California Clean Energy Commission v. City of Woodland* (2014) 225 CA4th 173; *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256; *Spring Valley Lake Ass'n v. City of Victorville* (2016) 248 CA4th 91.

²² CEQA Guidelines Section 15064.4(b).

²³ CEQA Guidelines § 15162(a).

different land uses. This is a substantial increase in overall GHG emissions and emissions from these land uses and magnitude were not considered in the original MND. As a result, an Addendum is appropriate and a subsequent EIR is required.

F. The Staff Report Fails to Address the Revised Project's Potentially Significant Increases in Energy Consumption

In our initial comments, we explained that the Addendum failed to make necessary disclosures regarding the Project's energy consumption. Appendix F of the CEQA Guidelines lists several disclosures relating to energy consumption that should be included in an environmental document, including (1) energy-consuming equipment and processes used during construction and operation of the project, as well as discuss their energy intensiveness, (2) total energy requirements of the project by fuel type and end use, and energy conservation equipment and design features."²⁴ Instead, the Addendum relies on the expectation 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.

The staff report asserts that CREED LA's comments did not provide evidence that energy-consuming medical equipment would be included in the proposed medical office space.²⁵ This response fails to address the point of the comment, which is that the Addendum fails to make disclosures and analysis required by CEQA.

Without this analysis, the City lacks substantial evidence to conclude that the Revised Project's energy consumption would not constitute a "substantial change" "which will require major revisions of the previous EIR due to the involvement of new significant effects."²⁶ Here, the Revised Project proposes new types of energy consumption related to the medical office land use that were not analyzed in the approved parking structure's MND. An EIR must be prepared that includes an adequate disclosure of the Project's energy consumption.

III. CONCLUSION

As explained above, the staff report fails to adequately address the Project's environmental impacts. The City thus lacks substantial evidence to support the findings necessary to approve the Project. CREED LA respectfully requests that the Committee uphold this appeal, vacate the Central Area Planning Commission's

²⁴ CEQA Guidelines, Appendix F, subd. I.

²⁵ Staff report, Response A1-1; Meridian Letter, RTC 14.

²⁶ CEQA Guidelines § 15162(a).

May 2, 2023
Page 11

approval of the Project, and require staff to prepare a legally adequate subsequent EIR.

Sincerely,

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

Aidan P. Marshall

APM:acp