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April 10, 2023

Via Email and Overnight Mail

More Song, City Planner
City of Los Angeles, Department of City Planning
200 North Spring Street, Room. 763
Los Angeles, CA 90012
E-mail: More.Song@lacity.org

Re: Comments on the Sustainable Communities Environmental Assessment for the FOUND Residences Project (Case Nos. ENV-2022-1049-SCEA; CPC-2022-1048-DB-HCA; AA-2019-476-PMEX).

Dear Mr. Song:

We are writing on behalf of **Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA")** to provide comments on the Sustainable Communities Environmental Assessment ("SCEA") prepared by the City of Los Angeles ("City") for the FOUND Residences Project (Case Nos. ENV-2022-1049-SCEA; CPC-2022-1048-DB-HCA) ("Project"), proposed by 6422 Selma Owner, LLC ("Applicant").

The Project proposes the demolition of an existing one-story storage building and the refurbishment of portions of the existing one-story historic commercial building on the Project Site to develop a 15-story building with 45 4-bedroom residential units. The Project would encompass a total floor area of up to 67,599 square feet resulting in a Floor Area Ratio ("FAR") of 4.5:1 and would have a maximum building height of 180 feet and five inches (180'-5"). The Project site is an approximately 15,022 square foot (0.35 acre) site located at 6422 Selma Avenue, and portions of 1540-1552 N. Wilcox Avenue, Lots 2, 3, 4, and 5 of Tract No. 1754, Assessor Parcel Numbers (APN) 5546-013-002 and 5546-013-003.

The Project seeks discretionary approvals from the City, including approval of Base and Additional Incentives pursuant to Los Angeles Municipal Code ("LAMC") Section 12.22 A.31 and the Transit Oriented Communities Affordable Housing Incentive Program Guidelines ("TOC Guidelines"). These Incentives include (1) an increase in FAR to 4.5:1 in lieu of the permitted base FAR of 3.0:1, (2)

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reductions in the required side and rear yard setbacks, (3) a 19% reduction in the required open space, and (4) a reduction in drive aisle width. The Project also seeks a Lot Line Adjustment (Case No. AA-2019-476-PMEX) and Hollywood Redevelopment Project Area (“RPA”) administrative clearance.

We reviewed the SCEA and its technical appendices with the assistance of air quality and health risk expert James Clark, Ph.D.¹ We also received technical assistance from noise expert Ani Toncheva.² The City must separately respond to these technical comments.

Based upon our review of the SCEA and supporting documentation, we conclude that the SCEA fails to comply with the requirements of CEQA. As explained more fully below, the SCEA does not accurately disclose potentially significant air quality, energy, and noise impacts. The SCEA also fails to disclose potentially significant health risk impacts due to exposure from diesel particulate matter (“DPM”). The SCEA also includes errors in its project description by being inconsistent regarding the Project’s stationary sources of air emissions. As a result of its shortcomings, the SCEA lacks substantial evidence to support its conclusions that impacts are less than significant and fails to properly mitigate the Project’s significant environmental impacts. The City cannot approve the Project until the errors and omissions in the SCEA are remedied in a Sustainable Communities Environmental Impact Report (“SCEIR”)³ that is recirculated for public review and comment.

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.

¹ Dr. Clark’s technical comments and curricula vitae are attached hereto as **Exhibit A** (“Clark Comments”).

² Ms. Toncheva’s technical comments and curricula vitae are attached hereto as **Exhibit B** (“Toncheva Comments”).

³ Pub. Res. Code § 21155.2(c)(2).

Individual members of CREED LA and its member organizations 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 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. LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances).⁴ The EIR is the very heart of CEQA.⁵ "The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."⁶

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.⁷ "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR "protects not only the environment but also informed self-government."⁸ The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the

⁴ See, e.g., PRC § 21100.

⁵ *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

⁶ *Comtys. for a Better Env' v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 ("*CBE v. CRA*").

⁷ 14 CCR § 15002(a)(1).

⁸ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

public and its responsible officials to environmental changes before they have reached ecological points of no return.”⁹

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.¹⁰ The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”¹¹ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”¹²

A. Streamlined Environmental Review for Transit Priority Projects

CEQA allows for the streamlining of environmental review for “transit priority projects” meeting certain criteria.¹³ To qualify as a transit priority project, a project must

- 1) contain at least 50 percent residential use, based on total building square footage and, if the project contains between 26 percent and 50 percent nonresidential uses, a floor area ratio of not less than 0.75;
- 2) provide a minimum net density of at least 20 dwelling units per acre; and
- 3) be within one-half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan.¹⁴

A transit priority project is eligible for CEQA’s streamlining provisions where it is:

consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board ... has accepted a metropolitan planning organization’s

⁹ *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.

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

¹¹ 14 CCR §15002(a)(2).

¹² PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

¹³ Pub. Res. Code §§ 21155, 21155.1, 21155.2.

¹⁴ Pub. Res. Code § 21155(b).

determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.¹⁵

On September 3, 2020, the Regional Council of the Southern California Association of Governments (“SCAG”) adopted the 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy (“2020-2045 RTP/SCS”), which was accepted by the California Air Resources Board (“CARB”). The final program EIR for the 2020-2045 RTP/SCS was certified on May 7, 2020.

If “all feasible mitigation measures, performance standards, or criteria set forth in the prior applicable environmental impact reports and adopted in findings made pursuant to Section 21081” are applied to a transit priority project, the project is eligible to conduct environmental review using a SCEA or an SCEIR.¹⁶ A SCEA must contain an initial study which “identif[ies] all significant or potentially significant impacts of the transit priority project ... based on substantial evidence in light of the whole record.”¹⁷ The initial study must also “identify any cumulative effects that have been adequately addressed and mitigated pursuant to the requirements of this division in prior applicable certified environmental impact reports.”¹⁸ The SCEA must then “contain measures that either avoid or mitigate to a level of insignificance all potentially significant or significant effects of the project required to be identified in the initial study.”¹⁹ The SCEA is not required to discuss growth inducing impacts or any project specific or cumulative impacts from cars and light-duty truck trips generated by the project on global warming or the regional transportation network.²⁰

After circulating the SCEA for public review and considering all comments, a lead agency may only approve the SCEA with findings that all potentially significant impacts have been identified and mitigated to a less-than-significant level.²¹ A lead agency’s approval of a SCEA must be supported by substantial evidence.²²

In this case, the City failed to conduct a proper analysis of the Project’s noise, air quality, energy, and public health impacts. Furthermore, the SCEA fails to

¹⁵ Pub. Res. Code § 21155(a).

¹⁶ Pub. Res. Code § 21155.2.

¹⁷ Pub. Res. Code § 21155.2(b)(1).

¹⁸ *Id.*

¹⁹ Pub. Res. Code §21155.2(b)(2).

²⁰ Pub. Res. Code § 21159.28(a).

²¹ Pub. Res. Code § 21155(b)(3), (b)(4), (b)(5)

²² Pub. Res. Code §21155(b)(7).

mitigate the significant effects of the Project, rendering the SCEA incomplete. The City must prepare a SCEIR in order to fully analyze and mitigate the Project's impacts.

III. THE PROJECT DESCRIPTION IS INADEQUATE

The SCEA does not meet CEQA's requirements because it fails to include an accurate and complete Project description, rendering the entire analysis inadequate. California courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."²³ CEQA requires that a project be described with enough particularity that its impacts can be assessed.²⁴ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.²⁵ Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.²⁶

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."²⁷ "The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval."²⁸ 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."²⁹ "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."³⁰

²³ *Stoepthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* ("CBE v. Richmond") (2010) 184 Cal.App.4th 70, 85–89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.

²⁴ 14 CCR § 15124; see, *Laurel Heights I, supra*, 47 Cal.3d 376, 192-193.

²⁵ *Id.*

²⁶ *Sundstrom v. County of Mendocino* ("Sundstrom") (1988) 202 Cal.App.3d 296, 311.

²⁷ CEQA Guidelines § 15378.

²⁸ *Id.*, § 15378(c).

²⁹ *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.

³⁰ *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

A. The SCEA is Internally Inconsistent Regarding Whether it Includes a Stationary Generator

The SCEA and its air quality/greenhouse gas study assume that the Project would not include a stationary back-up generator.³¹ Dr. Clark reviewed the CalEEMod outputs provided in the air study, and found that no generator is included in the analysis.³² But Dr. Clark observes that the design drawings from the SCEA's project description show a generator on the second floor, as shown in the figure below.³³

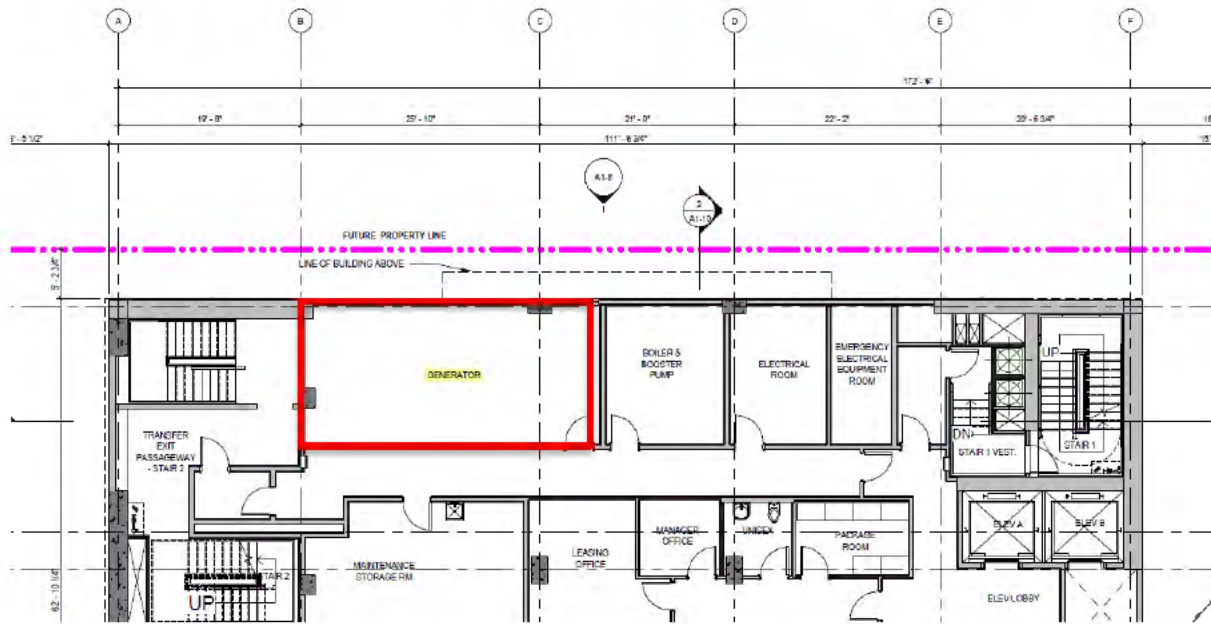


Figure 1: Second Floor Design Showing Generator System

Generators can emit criteria air pollutants, greenhouse gases, and toxic air contaminants. Backup generators commonly rely on fuels such as natural gas or

³¹ SCEA, pg. IV-44, 47; Appendix B, pg. 48.

³² Clark Comments, pg. 3.

³³ Clark, pg. 5.

diesel,³⁴ and thus can significantly impact public health through DPM emissions.³⁵ Diesel back-up generators emit significant amounts of Nitrogen Oxides (NO_x), sulfur dioxides (SO₂), particulate matter (PM₁₀), carbon dioxide (CO₂), carbon monoxide (CO), and volatile organic compounds (VOC).³⁶ Omission of a generator system results in an underestimation of the Project's air quality, greenhouse gas, and health risk impacts.³⁷

Besides being included in the Project's design plans, back-up generators are a reasonably foreseeable consequence of the Project due to increasingly common Public Safety Power Shutoff ("PSPS") events and extreme heat events. Extreme heat events ("EHE") are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.³⁸ From January 2019 through December 2019, Southern California Edison reported 158 of their circuits underwent a PSP

³⁴ 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").

³⁵ 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 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)").

³⁶ University of California, Riverside Bourns College of Engineering—Center for Environmental Research and Technology, Air Quality Implications Of Backup Generators In California, (March 2005), pg. 8, available at <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=84c8463118e4813a117db3d768151a8622c4bf6b>; South Coast AQMD, Fact Sheet on Emergency Backup Generators ("Emissions of Nitrogen Oxides (NO_x) from diesel-fired emergency engines are 200 to 600 times greater, per unit of electricity produced, than new or controlled existing central power plants fired on natural gas. Diesel-fired engines also produce significantly greater amounts of fine particulates and toxics emissions compared to natural gas fired equipment."), available at <http://www.aqmd.gov/home/permits/emergency-generators#Fact2>.

³⁷ Clark Comments, pg. 3.

³⁸ Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021.

event.³⁹ In Los Angeles County, two circuits had 4 PSPS events during that period, lasting an average of 35 to 38 hours. The total duration of the PSPS events lasted between 141 hours to 154 hours in 2019. According to the California Public Utilities Commission (CPUC) de-energization report⁴⁰ in October 2019, there were almost 806 PSPS events that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers. The California Air Resources Board estimates that with 973,000 customers impacted by PSPS events in October 2019, approximately 125,000 back-up generators were used by customers to provide electricity during power outage.⁴¹ The widespread use of back-up generators to adapt to PSPS and EHE events suggests that back-up generators are a reasonably foreseeable consequence of the Project.

In sum, as shown by the inconsistency between the Project design plans and text, the Project lacks “an accurate, stable and finite project description,” and thus fails to meet CEQA’s standards.⁴² The inconsistencies regarding the Project’s generator affects the quality of the SCEA’s analysis, as omission of the Project’s generator results in an underestimation of the Project’s air quality, greenhouse gas, and health risk impacts.⁴³ An SCEIR must be prepared that resolves this project description inconsistency, and corrects the affected impacts analyses to accurately disclose the Project’s potentially significant impacts.

IV. THE SCEA FAILS TO ADEQUATELY ANALYZE, QUANTIFY, AND MITIGATE THE PROJECT’S POTENTIALLY SIGNIFICANT IMPACTS

An SCEA must fully disclose all potentially significant impacts of a project, and must implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency’s significance determination with regard to each impact must be supported by accurate scientific and factual data.⁴⁴ An agency

³⁹ SCAQMD. 2020. Proposed Amendment To Rules (PARS) 1110.2, 1470, and 1472. Dated December 10, 2020. http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2_1470_1472/par1110-2_1470_wgm_121020.pdf?sfvrsn=6.

⁴⁰ <https://www.cpuc.ca.gov/deenergization/> as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage..

⁴¹ 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>.

⁴² *Stoepthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* (“*CBE v. Richmond*”) (2010) 184 Cal.App.4th 70, 85–89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.

⁴³ Clark Comments, pg. 3.

⁴⁴ 14 CCR § 15064(b).

cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁴⁵

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by law.⁴⁶ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.⁴⁷

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."⁴⁸

A. The SCEA Fails to Disclose and Mitigate Potentially Significant Air Quality and Health Risk Impacts

1. The SCEA Fails to Disclose Potentially Significant Health Risks from Project Emissions

The SCEA acknowledges that the Project's construction activities would generate Toxic Air Contaminant ("TAC") emissions. Specifically, the Project's construction and operation would generate DPM, a type of TAC.⁴⁹ DPM would be emitted during construction by heavy equipment and diesel trucks, and during operations by the Project's backup generator.⁵⁰ DPM has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.⁵¹ The SCEA acknowledges that DPM is carcinogenic.⁵² The Project's emissions of DPM would impact numerous sensitive receptors, including residents directly adjacent to the Project site at the Gilbert

⁴⁵ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

⁴⁶ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

⁴⁷ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁴⁸ *Berkeley Jets*, 91 Cal.App.4th at 1355.

⁴⁹ SCEA, pg. IV-19.

⁵⁰ 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").

⁵¹ Clark Comments, pg. 3-5.

⁵² SCEA, pg. IV-40.

Hotel.⁵³ But the SCEA fails to adequately analyze and mitigate this potentially significant health risk.

CEQA requires analysis of human health impacts. CEQA Guidelines Section 15065(a)(4) provides that the City is required to find a project will have a significant impact on the environment and require an EIR if the environmental effects of a project will cause a substantial adverse effect on human beings. The Supreme Court has also explained that CEQA requires the lead agency to disclose the health consequences that result from exposure to a project's air emissions.⁵⁴ 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.⁵⁵

In *Bakersfield Citizens for Local Control v. City of 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."⁵⁶ Likewise, in *Sierra Club*, the California Supreme Court held that the EIR's discussion of health impacts associated with exposure to the named pollutants was too general and the failure of the EIR to indicate the concentrations at which each pollutant would trigger the identified symptoms rendered the report inadequate.⁵⁷ Some connection between air quality impacts and their direct, adverse effects on human health must be made. As the Court explained, "a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact."⁵⁸ CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.⁵⁹

For development projects like this one, the Office of Environmental Health Hazard Assessment's ("OEHHA") risk assessment guidelines also recommend a formal health risk analysis ("HRA") for short-term construction exposures to TACs lasting longer than 2 months and exposures from projects lasting more than 6

⁵³ SCEA, pg. IV-20; see pg. IV-33 (sensitive receptors approximately 25 meters from Project site).

⁵⁴ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 523.

⁵⁵ *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

⁵⁶ *Id.* at 1220.

⁵⁷ *Sierra Club*, at 521.

⁵⁸ *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

⁵⁹ *Sierra Club*, 6 Cal.5th at 518–522.

months should be evaluated for the duration of the project.⁶⁰ In an HRA, lead agencies must first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern.⁶¹ Following that analysis, then the City can make a determination of the relative significance of the emissions. The SCEA acknowledges that “[t]he amount to which the receptors are exposed (a function of concentration and duration of exposure) is the primary factor used to determine health risk (i.e., potential exposure to TAC emission levels that exceed applicable standards).”⁶² The significance threshold for this Project is that a significant health risk impact occurs if the Project would expose sensitive receptors to air contaminants that exceed the maximum incremental cancer risk of 10 in one million.⁶³

The City failed to conduct this analysis. Despite acknowledging that exposure is the primary factor used to determine health risk, the SCEA does not quantify sensitive receptors’ exposure to DPM emitted during Project construction and operation. Regarding construction emissions of DPM, the SCEA’s qualitative analysis instead offers that the health risk would be less than significant because the use of diesel-powered construction equipment would be temporary and episodic, and that the proposed project site is only 0.35-acres.⁶⁴ But merely explaining that certain health risk factors are lower for this Project than others does not disclose the health consequences that result from exposure to this Project’s air emissions.⁶⁵ Regarding health risk from Project operation, the SCEA reasons that the Project would only generate few diesel truck trips, and would not include a stationary generator.⁶⁶ This analysis fails to disclose sensitive receptors’ exposure to pollutants.

The City also reasons that because the Project’s emissions would not exceed Localized Significance Thresholds (“LSTs”), the Project’s localized air quality impacts would not expose sensitive receptors to substantial air pollutant

⁶⁰ Office of Environmental Health Hazard Assessment (OEHHA), Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, February 2015 (OEHHA 2015), Section 8.2.10: Cancer Risk Evaluation of Short Term Projects, pp. 8-17/18; <https://oehha.ca.gov/air/crnrr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>.

⁶¹ *Id.*

⁶² SCEA, Appendix B, pg. 38.

⁶³ SCEA, Appendix B, pg. 25.

⁶⁴ SCEA, Appendix B, pg. 38.

⁶⁵ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 523.

⁶⁶ SCEA, IV-47; Appendix B, pg. 38.

concentrations. LSTs are based on the number of pounds of emissions per day that can be generated by a project that would cause or contribute to adverse localized air quality impacts.⁶⁷ But LSTs only apply to four pollutants: NO_x, CO, PM₁₀, and PM_{2.5}. LSTs do not apply to DPM and other TACs, and thus do not disclose the magnitude of the Project's emissions and resultant health impacts.⁶⁸ Thus, the SCEA's analysis of LSTs is no substitute for the SCEA's failure to analyze health risk impacts from exposure to TACs.

The SCEA fails to comply with CEQA by failing to provide the necessary information to evaluate the health risk impacts of the Project. Due to the proximity of the nearest sensitive receptors to construction and operational sources of DPM, there is no dispute that the Project may result in potentially significant health risk impacts. The City must prepare an HRA to evaluate the magnitude of the Project's health risk impacts in accordance with CEQA.

2. The SCEA's Analysis of Exposure of Sensitive Receptors to Substantial Air Pollutant Concentrations is Not Supported by Substantial Evidence

The City's conclusion that operational emissions would not result in a significant health risk lacks the support of substantial evidence. The City claims that the Project would generate few diesel truck trips, and would not include a stationary generator.⁶⁹ But the Project's design drawings include a stationary back-up generator.⁷⁰ Backup generators commonly rely on fuels such as natural gas or diesel,⁷¹ and thus can significantly impact public health through DPM emissions.⁷²

⁶⁷ SCEA, pg IV-33.

⁶⁸ Clark Comments, pg. 3.

⁶⁹ SCEA, IV-47; Appendix B, pg. 38.

⁷⁰ Clark Comments, pg. 4.

⁷¹ 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").

⁷² 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 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

Without quantifying the emissions from the Project's backup generator in conjunction with the Project's other operational emissions, the SCEA's finding of a less-than-significant operational air quality impact thus lacks substantial evidence. The SCEA's analytical flaw must be corrected in an SCEIR.

Similarly, the SCEA's air study omits any reference to a fire pump. The text of the SCEA states that the Project includes a fire pump system.⁷³ Fire pumps are used to increase the pressure of a water source when that source is not adequate for the system it is supplying. Fire pumps are commonly found in buildings that tend to have a high-pressure demand such as high-rises. Fire pumps typically use diesel fuel as a power source. The emissions from fire pumps include criteria pollutants such as oxides of nitrogen, volatile organic compounds (VOCs), carbon monoxide (CO), and particulate matter less than 10 microns (PM₁₀) and PM less than 2.5 microns (PM_{2.5}); and air toxins such as diesel particulate matter (DPM).⁷⁴

But Dr. Clark reviewed the CalEEMod outputs provided in the air study, and found that no fire pump system is included in the analysis. This assumption is in contrast to the text of the SCEA, and the design drawings from the description section of the SCEA, which show a fire pump system on the ground floor.⁷⁵

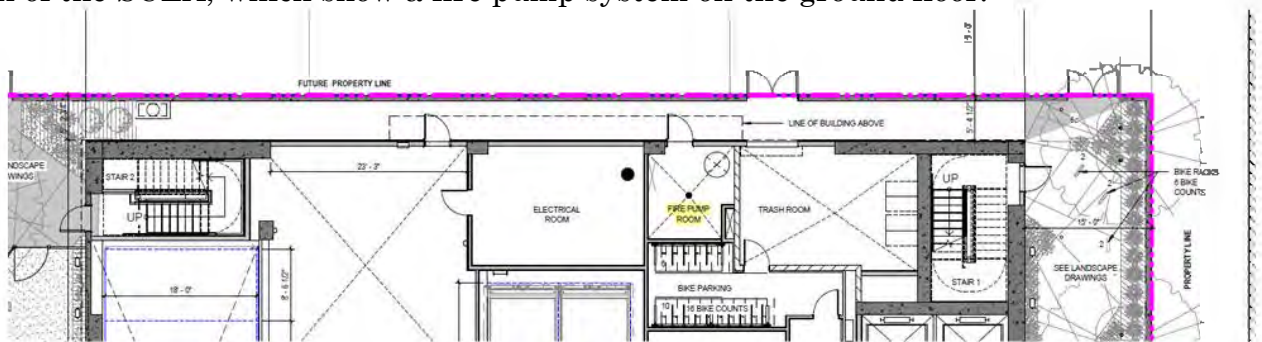


Figure 2: Ground Floor Design Showing Fire Pump System

By failing to include this source of DPM in the SCEA's analysis, the SCEA's disclosure and analysis of the Project's public health impacts is inadequate.

As a result of these analytical flaws, the SCEA also failed to conduct a Localized Operational Significance Analysis. The SCEA states “[a]ccording to the

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”).

⁷³ SCEA, pg. IV-61 (“construction of the Proposed Project would include a basement area containing a 50,000-gallon fire water storage tank, a fire pump room”).

⁷⁴ Clark Comments, pg. 5.

⁷⁵ Clark Comments, pg. 4.

SCAQMD LST methodology, LSTs would apply to the operational phase of a Proposed Project only if the project includes stationary sources or attracts mobile sources that may spend long periods queuing and idling at the site.”⁷⁶ The SCEA thus reasons that, because no stationary source is proposed, a Localized Operational Significance Analysis is inapplicable.⁷⁷ But as discussed above, a back-up generator is included in the Project’s design, the SCEA does not contain a mitigation measure or proposed condition of approval prohibiting the use of a backup generator, and use of a backup generator during Project operation is reasonably foreseeable due to increasingly common PSPS events and EHEs. Additionally, a fire pump is directly stated to be part of the Project. Thus, an SCEIR must be prepared that includes this analysis.

3. The SCEA Underestimates Air Quality Impacts By Failing to Consider Generator and Fire Pump Emissions

As explained above, the Project includes a fire pump system, and it is reasonably foreseeable that it includes a back-up generator. As discussed earlier and in Dr. Clark’s comments, the emissions from fire pumps include criteria pollutants such as oxides of nitrogen, volatile organic compounds (VOCs), carbon monoxide (CO), and particulate matter less than 10 microns (PM₁₀) and PM less than 2.5 microns (PM_{2.5}); and air toxins such as diesel particulate matter (DPM).⁷⁸

But the SCEA’s air study omits any reference to a fire pump or a back-up generator. Dr. Clark reviewed the CalEEMod outputs provided in the air study, and found that no fire pump system or operational back-up generator included in the analysis. By failing to include these sources of criteria pollutants in the air study’s CalEEMod analysis, the Project fails to disclose the full extent of the Project’s criteria air pollutants. As a result, the SCEA’s significance finding regarding criteria pollutant emissions is not supported by substantial evidence. This potentially significant impact must be analyzed in an SCEIR.

4. The Project Conflicts With Policies Regarding Air Quality and Health Risk

The CEQA Guidelines provide that a significant air quality impact would occur when a project “[c]onflict[s] with or obstruct implementation of the applicable air quality plan.”⁷⁹ Further, the Guidelines provide that a significant impact would

⁷⁶ SCEA, pg. IV-44.

⁷⁷ *Id.*

⁷⁸ Clark Comments, pg. 5.

⁷⁹ CEQA Guidelines, Appendix G, subd. III.

occur if a project conflicts with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect.⁸⁰

Policy 1.3.1 of the City of Los Angeles' General Plan Air Quality Element provides: “[m]inimize particulate emissions from construction sites.”⁸¹ But here, the Project does not attempt to minimize DPM emissions from the Project's construction, or even set minimum emissions standards for construction equipment. Nor does the SCEA adopt any of the mitigation measures recommended in PMM AQ-1. And the Project does not provide evidence that the particulate emissions measures in PMM AQ-1 or elsewhere are infeasible or ineffective. Thus, the Project fails to “minimize” PM emissions within the meaning of Policy 1.3.1.

Policy 5.3.1 of the Air Quality Element provides: “Support the development and use of equipment powered by electric or low-emitting fuels.” Here, the SCEA does not propose or evaluate the feasibility of electric or low-emission equipment during construction. Nor does the Project propose or evaluate the feasibility of utilizing existing power sources (e.g., power poles) or clean fuel generators rather than temporary power generators. During operations, the Project does not evaluate the feasibility of using a clean fuel stationary generator. And the SCEA does not include any other discussion regarding the use of electric/low-emitting equipment. Due to the failure to analyze these options, the Project is inconsistent with Policy 5.3.1. The SCEA must be revised to include analysis evaluating these and other low-emitting fuel measures.

B. The SCEA Fails to Adequately Analyze the Project's Potentially Significant Energy Impacts

The SCEA does not include sufficient investigation into energy conservation measures that might be available or appropriate for the Project. CEQA requires an environmental document to discuss mitigation measures for significant environmental impacts, including “measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.”⁸² The CEQA Guidelines require discussion of energy conservation measures when relevant, and provide examples in Appendix F:⁸³

⁸⁰ CEQA Guidelines, Appendix G, subd. X.

⁸¹ SCEA, pg. IV-28.

⁸² Pub. Resources Code, § 21100(b)(3); *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 930.

⁸³ 14 Cal. Code Regs., § 15126.4(a)(1)(C) (stating “Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.”).

- 1) Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.
- 2) The potential of siting, orientation, and design to minimize energy consumption, including transportation energy, increase water conservation and reduce solid waste.
- 3) The potential for reducing peak energy demand.
- 4) Alternate fuels (particularly renewable ones) or energy systems.
- 5) Energy conservation which could result from recycling efforts.

Courts have rejected EIRs that fail to include adequate analysis investigation into energy conservation measures that might be available or appropriate for a project.⁸⁴ In *California Clean Energy Commission v. City of Woodland* (“CCEC”),⁸⁵ the Court of Appeal reviewed an EIR for a shopping center. The EIR concluded that, due to the proposed project’s compliance with Title 24 guidelines and regulations, the project would be expected to have a less-than-significant impact regarding the wasteful, inefficient, or unnecessary consumption of energy. But the lead agency’s EIR did not include discussion regarding the different renewable energy options that might be available or appropriate for the project. The Court held “the City’s EIRs failed to comply with the requirements of Appendix F to the Guidelines by not discussing or analyzing renewable energy options.”⁸⁶ The lead agency argued that compliance with the Building Code sufficed to address energy impact concerns for the project.⁸⁷ But the Court explained:

Although the Building Code addresses energy savings for components of a new commercial construction, it does not address many of the considerations required under Appendix F of the CEQA Guidelines... These considerations include whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building’s envelope. Here, a requirement that Gateway II comply with the Building Code does not, by itself, constitute an adequate assessment of mitigation measures that can be taken to address the energy impacts during construction and operation of the project.⁸⁸

⁸⁴ *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.

⁸⁵ (2014) 225 CA4th 173.

⁸⁶ *Id.* at 213.

⁸⁷ *Id.* at 210, 211.

⁸⁸ *CECC* (2014) 225 CA4th 173, 213.

1. The SCEA Fails to Adequately Analyze Potentially Significant Operational Natural Gas Impacts

Here, the SCEA explains that Project operations would result in the consumption of natural gas, but reasons that CALGreen building standards will ensure that energy impacts will be less than significant.⁸⁹ As explained above, Courts have held that this level of analysis does not meet CEQA's standards.

Rather, substantial evidence demonstrates that residential natural gas use contributes significantly to climate change, and has health risks on residents.⁹⁰ In a 1992 meta-analysis of studies on this topic, scientists at the EPA and Duke University found that nitrogen dioxide exposure that is comparable to that from a gas stove increases the odds of children developing a respiratory illness by about 20 percent.⁹¹ Since then, numerous other studies have documented the effects of gas stove exposure on respiratory health. A 2013 meta-analysis of 41 studies found that gas cooking increases the risk of asthma in children and that NO₂ exposure is linked with currently having a wheeze.⁹² Most recently, a study published last December found that 12.7 percent of childhood asthma cases in the U.S. can be attributed to gas stove use.⁹³ In sum, residential natural gas use has impacts on public health and the environment that are not disclosed in the SCEA – the SCEA's compliance with the Project's consistency with CALGreen building standards do not address this impact. An SCEIR must be prepared to analyze this potentially significant impact.

Similarly, the SCEA's discussion does not include a discussion of feasible measures to reduce natural gas consumption, as required by Appendix F of the CEQA Guidelines. An SCEIR must be prepared that evaluates feasible mitigation measures. These measures include building electrification measures, such as replacing gas stoves with electric stoves.

⁸⁹ SCEA, pg. IV-68.

⁹⁰ <https://www.washingtonpost.com/politics/2023/01/06/gas-stove-pollution-causes-127-childhood-asthma-study-finds/>; <https://www.scientificamerican.com/article/the-health-risks-of-gas-stoves-explained/>;

⁹¹ Hasselblad et al., Synthesis of Environmental Evidence: Nitrogen Dioxide Epidemiology Studies; Journal of the Air & Waste Management Association Volume 42, 1992 - Issue 5, available at <https://www.tandfonline.com/doi/abs/10.1080/10473289.1992.10467018>.

⁹² Lin et al., Meta-analysis of the effects of indoor nitrogen dioxide and gas cooking on asthma and wheeze in children, International Journal of Epidemiology, Volume 42, Issue 6, December 2013, Pages 1724–1737 <https://academic.oup.com/ije/article/42/6/1724/737113?login=false>.

⁹³ Gruenwald et al., Population Attributable Fraction of Gas Stoves and Childhood Asthma in the United States, Int. J. Environ. Res. Public Health 2023, 20(1), 75, available at <https://www.mdpi.com/1660-4601/20/1/75>.

2. The SCEA Fails to Adequately Analyze Operational Consumption of Electricity

The SCEA reasons that consumption of electricity would be less than significant due to compliance with Title 24, CALGreen Building Standards, and the LA Green Building Code. As explained above, courts have held that this level of analysis does not meet CEQA’s standards – the SCEA must also include discussion regarding the different renewable energy options that might be available or appropriate for the project.

Here, the SCEA fails to analyze whether onsite solar generation is feasible, or how much of the Project site could support onsite solar generation (i.e. the extent of the potential solar zone). This investigation is necessary to adequately evaluate the potential for increased energy efficiency and reduced waste, as required by CEQA Guidelines Appendix F.

3. The SCEA Fails to Adequately Analyze Construction Energy Consumption

The SCEA’s discussion of energy conservation measures also violates CEQA Guidelines Appendix F in regards to offroad equipment used in the construction and operation of the Project. The SCEA does not propose or evaluate the feasibility of electric or low-emission equipment during construction. Nor does the SCEA propose or evaluate the feasibility of utilizing existing power sources (e.g., power poles) or clean fuel generators rather than temporary power generators. Thus, the SCEA “fail[s] to comply with the requirements of Appendix F to the Guidelines by not discussing or analyzing renewable energy options.”⁹⁴ Therefore, an SCEIR must be prepared.

C. The SCEA Fails to Adequately Analyze and Mitigate Significant Noise and Vibration Impacts

1. The SCEA’s Construction Noise Threshold is Not Supported by Substantial Evidence

The SCEA states that “construction noise impacts would be significant if noise from construction equipment exceeds a maximum noise level of 75 dBA at a distance of 50 feet from the sound source.”⁹⁵ The SCEA’s construction noise

⁹⁴ *CCEC*, 225 CA4th 173, 213.

⁹⁵ SCEA pg. IV-136 (citing LAMC Section 112.05).

threshold is not supported by substantial evidence because it fails to reflect significant noise increases over existing levels. The CEQA Guidelines state that a project would normally have a significant effect on the environment if the project would result in “generation of a substantial temporary or permanent increase in ambient noise levels.”⁹⁶

In *King and Gardiner Farms, LLC v. County of Kern et al.*,⁹⁷ the Fifth District Court of Appeal held that the County inappropriately applied a single threshold for determining the significance of the project’s noise impacts. To determine whether implementation of an ordinance would cause significant noise impacts, the County used a quantitative threshold of 65 dBA DNL, meaning that the ordinance would not cause a significant noise impact if noise levels stayed below that threshold. The court held that the County’s use of a single threshold violated CEQA because the threshold did not measure the increase in noise levels over ambient levels. Comments on the EIR, as well as the County’s own noise report that was appended to the Draft EIR, suggested using an increase of 5 dBA to determine whether the increase in noise above ambient levels constituted a significant impact. But the County did not do so. Instead, the County argued that it was entitled to substantial deference in selecting the significance thresholds. Although the court agreed that the County is entitled to deference in its choice of significance thresholds, the court held that the County’s use of an absolute noise threshold for evaluating all ambient noise impacts violated CEQA because it did not provide a “complete picture” of the noise impacts that may result from implementation of the ordinance.

Here, the SCEA similarly relies on a single quantitative threshold to determine the significance of construction noise. As in *King and Gardiner Farms*, this approach is inadequate. And, even if 75 dBA were the sole applicable threshold, CREED LA’s noise consultant finds that all of the Project’s construction equipment exceeds the LAMC 75 dBA Lmax at 50 feet criteria, resulting in a significant undisclosed and unmitigated impact.⁹⁸ Therefore, in order to evaluate construction noise impacts, an SCEIR should be prepared to consider an ambient-based threshold in addition to the 75 dBA criteria.

⁹⁶ SCEA, pg. IV-136.

⁹⁷ (2020) 45 Cal.App.5th 814.

⁹⁸ Toncheva Comments, pg. 1.

2. The Project's Construction Activities would Generate a Substantial Increase in Ambient Noise Levels

Substantial evidence shows that the Project's construction noise impacts are significant when an adequate threshold is applied that considers increase over ambient noise levels. As stated in the SCEIR, a change of 5 dB over ambient "is readily noticeable, while the human ear perceives a 10 dB(A) increase in sound level to be a doubling of sound."⁹⁹ Referring to the SCEA's own estimates, Ms. Toncheva presents evidence showing that estimated construction noise at the Mark Twain Hotel across Selma Avenue would exceed 5 dB over existing levels, and estimated construction noise at the Gilbert Hotel would exceed over 10 dB over existing levels.¹⁰⁰ Based on the information in the SCEA, these noise increases would constitute a substantial increase in the ambient environment. Thus, substantial evidence shows that, before mitigation, the project would result in "generation of a substantial temporary or permanent increase in ambient noise levels."¹⁰¹

The SCEA claims these impacts would be mitigated by MM NOI-1, which requires the use of improved mufflers and silencers, achieving an approximately 10 dBA reduction.¹⁰² Assuming a 10 dBA reduction was feasible, the Project's estimated construction noise at the Gilbert Hotel would still exceed 5 dB over existing levels (74.2 over 68.6 dBA). Thus, substantial evidence shows that, even after mitigation, the project would result in "generation of a substantial temporary or permanent increase in ambient noise levels."¹⁰³ This impact could occur throughout the Project's 24-month construction period,¹⁰⁴ and could be louder if additional equipment is used. This significant impact must be identified and mitigated in an SCEIR. Ms. Toncheva's comments discuss feasible mitigation measures.¹⁰⁵

3. The Project's Construction Noise Impacts are Greater than Disclosed in the SCEA

The SCEA's analysis of the Project's construction noise impacts contains errors, and is thus not supported by substantial evidence. Ms. Toncheva observes that the distances and attenuation from shielding used in the SCEA construction noise analysis are further away than the closest demolition and grading activity will

⁹⁹ SCEA, Appendix F, pg. 2; Toncheva Comments, pg. 1-2.

¹⁰⁰ Toncheva Comments, pg. 2.

¹⁰¹ SCEA, pg. IV-136.

¹⁰² SCEIR, Appendix F, pp. 17-18.

¹⁰³ SCEA, pg. IV-136.

¹⁰⁴ SCEA, pg. II-11 (Project is anticipated to be constructed over period of approximately 24 months).

¹⁰⁵ Toncheva Comments, pg. 2.

take place.¹⁰⁶ Ms. Toncheva measured the distances between these construction activities and sensitive receptors, finding that the SCEA overestimated the distances (and thus the attenuation of noise).¹⁰⁷ When accurate distances are used, Ms. Toncheva found that estimated construction noise levels at the closest distance to sensitive receptors are 2 to 16 dB higher than the Leqs reported in the SCEA.¹⁰⁸

Ms. Toncheva also observes that the construction noise analysis assumes there is an existing concrete wall that would attenuate impacts by 5 dBA,¹⁰⁹ but this wall is not visible in Google Earth or the existing site plans provided in the Project Description Section.¹¹⁰ This analytical issue may result in construction noise impacts being underestimated.

Ms. Toncheva also identified two sensitive receptors directly adjacent to the Project site that were not considered in the SCEA study: Goya Studios sound stages and Hollywood Clinic walk-in urgent care are. These receptors may be especially sensitive to noise, but were not discussed in the SCEA. Ms. Toncheva explains that while the sound stages are likely isolated from noise, the urgent care facility is noise sensitive due to patient comfort needs.¹¹¹

In sum, the Project's significant construction noise impacts are likely greater than analyzed in the SCEA and the SCEA omitted an analysis of noise impacts on some of the closest sensitive receptors. An SCEIR must be prepared to adequately disclose and mitigate these impacts.

4. Mitigation Measure NOI-1 Will Not Reduce Construction Noise Impacts to a Less Than Significant Level

The SCEA states that MM NOI-1 would reduce the Project's construction noise impacts to a less-than-significant level. MM NOI-1 provides:

Noise-generating equipment operated at the Project Site shall be equipped with noise control devices, such as mufflers, lagging (enclosures for exhaust pipes), and/or motor enclosures capable of reducing construction equipment noise by 10 dBA. All equipment shall be properly maintained to assure that

¹⁰⁶ SCEA, Appendix F, pg. 37

¹⁰⁷ Toncheva Comments, pg. 3.

¹⁰⁸ *Id.*

¹⁰⁹ SCEA, Appendix F, pg. 37

¹¹⁰ Toncheva Comments, pg. 3; SCEA Figure II-5.

¹¹¹ Toncheva Comments, pg. 3.

no additional noise, due to worn or improperly maintained parts, would be generated.¹¹²

CEQA requires mitigation measures to be supported by substantial evidence that they will be effective.¹¹³ But the SCEA lacks substantial evidence to claim MM NOI-1 would reduce noise impacts to the extent claimed (10 dBA). Ms. Toncheva explains that the source noise levels used by standard construction noise analyses, such as the SCEA's,¹¹⁴ come from the FHWA Construction Noise Handbook.¹¹⁵ Source noise levels from the Handbook represent contemporary equipment that are already equipped with mufflers. Ms. Toncheva reasons that a mitigation measure that requires mufflers could not realistically be expected to achieve a 10 dB reduction below the source noise levels, which represent contemporary equipment that are already equipped with mufflers. Thus, the effectiveness of MM NOI-1 is not supported by substantial evidence.

Ms. Toncheva also explains that mufflers would not mitigate all sources of construction noise from the Project – mufflers are only effective for machinery powered by internal combustion engines, not operational noise produced during work such as sawing.¹¹⁶ As a result, noise impacts from concrete saws (estimated at 90 dBA at 50 feet) would be unmitigated by MM NOI-1, and would remain significant.¹¹⁷

Ms. Toncheva's comments discuss additional feasible mitigation that should be required for the Project, including noise barriers that could provide 10 to 15 dB of reduction.¹¹⁸ An SCEIR must be prepared that identifies feasible construction noise mitigation.

5. The Project's Vibration Impacts Exceed Criteria for Annoyance

The SCEA finds that the Project would exceed groundborne vibration impact criteria with respect to building damage during construction activities.¹¹⁹ And the SCEA identifies mitigation (MM NOI-2) to reduce building damage associated with

¹¹² SCEA, Appendix F, pg. 18.

¹¹³ *Sacramento Old City Ass'n v. City Council* (1991) 229 Ca.3d 1011, 1027.

¹¹⁴ SCEA, Appendix F, pg. 16, 17.

¹¹⁵ Toncheva Comments, pg. 2.

¹¹⁶ Toncheva Comments, pg. 2.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ SCEA, Appendix F, pg. 21.

vibration impacts to a less-than-significant level.¹²⁰ But the SCEA fails to analyze the level of disruption to neighboring residences and businesses from vibration impacts that exceed annoyance thresholds. Analysis and mitigation of building damage from vibration does not reflect the impacts of vibration on sensitive receptors' interior operations, human annoyance, or health. Ms. Toncheva explains that the FTA Guidelines provide annoyance criteria for residences and buildings where people normally sleep (such as hotels) of 72 VdB and criteria for buildings where vibration would interfere with interior operations (such as recording studios and labs) of 65 VdB.¹²¹ An SCEIR must be prepared that analyzes whether the Project's vibration impacts would exceed annoyance criteria for neighboring sensitive receptors.

Ms. Toncheva observes that in addition to not providing annoyance calculations (VdB levels) at sensitive receptors, the SCEA does not disclose all of the sensitive receptors that would be impacted by vibration. The SCEA acknowledges that there are several hotels in close proximity to the Project site, such as the Dream Hollywood Hotel, Mark Twain Hotel, and Gilbert Hotel, which are recognized in the SCEA.¹²² But the SCEA does not make reference to the Goya Studios sound stages or Hollywood Walk-in Clinic, which are directly adjacent to the project site.¹²³ Ms. Toncheva explains that while the sound stages may be isolated from noise, the urgent care facility is noise sensitive due to patient comfort needs.¹²⁴ An SCEIR must be prepared that discloses and mitigates the Project's vibration impacts on these sensitive receptors.

Substantial evidence shows that vibration impacts would exceed significance thresholds for annoyance. Ms. Toncheva's comments present the distances at which use of construction equipment would exceed the FTA significance thresholds:¹²⁵

Table 4 Estimated Construction Vibration Levels

Equipment	FTA Reference Level at 25 feet (PPV / VdB)	Distance to 0.2 PPV, feet	Distance to 65 VdB, feet	Distance to 72 VdB, feet
Large Bulldozer	0.089 / 87	13	131	77

¹²⁰ SCEA, Appendix F, pg. 24.

¹²¹ Toncheva Comments, pg. 3.

¹²² SCEA, Appendix F, pg. 7.

¹²³ Toncheva Comments, pg. 3.

¹²⁴ Toncheva Comments, pg. 3.

¹²⁵ Toncheva Comments, pg. 4.

Equipment	FTA Reference Level at 25 feet (PPV / VdB)	Distance to 0.2 PPV, feet	Distance to 65 VdB, feet	Distance to 72 VdB, feet
Small Bulldozer	0.003 / 58	2	15	9
Loaded Trucks	0.076 / 86	12	121	71
Vibratory Roller	0.21 / 94	23	281	164

Ms. Toncheva explains that any work closer than these distances will be above the threshold of significance. Here, sensitive receptors are as close as 10 feet from Project construction.¹²⁶ Thus, without mitigation, the Project would have a significant vibration impact. An SCEIR must be prepared that identifies construction techniques to reduce vibration levels near sensitive receptors. Ms. Toncheva states that feasible mitigation may include using smaller equipment closer to sensitive receptors during demolition work.¹²⁷

VII. CONCLUSION

The Project would result in potentially significant impacts to public health from TACs, which were not adequately analyzed and mitigated to less than significant levels. The Project also failed to adequately analyze and mitigate impacts from energy use and noise. Moreover, the SCEA fails to meet CEQA's informational and analytical standards by failing to provide a stable project description.

For the foregoing reasons, we respectfully request that the City of Los Angeles to prepare and circulate an SCEIR which discloses all of the Project's potentially significant impacts and requires all feasible mitigation measures to reduce the Project's significant environmental and public health impacts.

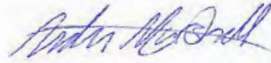
¹²⁶ SCEA, Appendix F, pg. 22 (Location #3 - 1550 Wilcox Ave (Gilbert Hotel))

¹²⁷ Toncheva Comments, pg. 4.

April 10, 2023
Page 26

We thank you for the opportunity to provide these comments on the SCEA.

Sincerely,



Aidan P. Marshall

Attachments
APM:acp