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Commission President Millman and Commission Members
City Planning Commission

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More Song, City Planner

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Re: Agenda Item 11 – Comments on FOUND Residences (Case Nos. ENV-2022-1049-SCEA; CPC-2022-1048-DB-HCA; AA-2019-476-PMEX).

Dear Commission President Millman, Commission Members, and Mr. Song:

We are writing on behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”) to provide comments on City Planning Commission (“CPC”) Agenda Item #11, the FOUND Residences Project (Case Nos. ENV-2022-1049-SCEA; CPC-2022-1048-DB-HCA) (“Project”), proposed by 6422 Selma Owner, LLC (“Applicant”). The CPC will consider approval of a Sustainable Communities Environmental Assessment (“SCEA”) prepared by the City of Los Angeles (“City”), Density Bonus Compliance Review, Findings, and Conditions.

On April 10, 2023, CREED LA provided comments on the SCEA explaining that the SCEA does not accurately disclose the Project’s potentially significant health risk, air quality, energy, and noise impacts. On May 23, 2023, CREED LA provided supplemental comments explaining that a backup generator was a reasonably foreseeable consequence of the Project. The Staff Report prepared for the July 13th Commission hearing includes responses to CREED LA’s comments. This letter addresses the responses to CREED LA’s comments contained in the Staff Report. This letter attaches analysis from air quality and hazards expert James Clark, Ph.D and noise expert Deborah Jue that also addresses the Staff Report’s contentions. In sum, these comments show that the Staff Report does not provide substantial evidence to approve the SCEA and make the approval findings. A Sustainable Communities Environmental Impact Report (“SCEIR”)¹ is required.

¹ Pub. Res. Code § 21155.2(c)(2).
L6580-008

I. The Project's Inclusion of a Backup Generator is Significant New Information

The SCEA and its air quality/greenhouse gas study assumed that the Project would not include a stationary back-up generator, and stated that the “Project does not propose any stationary generators on-site.”² CREED LA’s prior comments explained that use of a back-up generator is a reasonably foreseeable consequence of the Project. Because emissions of Diesel Particulate Matter (“DPM”) adversely impact air quality, climate change, and public health, backup generator emissions were required to be included in the SCEA’s air quality, greenhouse gas, and health risk analyses. In response to CREED LA’s comments, the Staff Report acknowledges that “[t]he Project Applicant has confirmed the Project will include a backup generator,” and that it is anticipated the generator will be a 250kW diesel generator.³ This statement demonstrates that emissions from backup generator use are part of the Project’s air emissions. The SCEA therefore fails to disclose or mitigate the full extent of the Project’s emissions, in violation of CEQA.

Here, the Staff Report presents new information about the nature and severity of the Project’s air emissions that was not included in the SCEA – that a backup generator will be used at the Project site. Emissions from backup generators include toxic air contaminants (“TACs”) such as diesel particulate matter (“DPM”), 1,3-butadiene, and acrolein.⁴ These are project-specific emissions which may exceed applicable thresholds and result in increased health risk; they were required to be disclosed in the SCEA.⁵

This new information is significant because it involves a potentially significant adverse effect on the environment: the SCEA itself acknowledges the significant environmental implications of backup generators, stating that “[t]he greatest potential during long-term operations for exposure to TACs is from the use of heavy-duty diesel trucks and **stationary generators that use diesel fuel**,” but that no stationary generators are proposed. Since the SCEA failed to analyze backup generator emissions, the City lacks substantial evidence to support a conclusion that the SCEA “contain[s] 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.”⁶ An SCEIR is required to address this undisclosed and potentially significant impact.

² SCEA, pg. IV-44, 47; Appendix B, pg. 48.

³ Impact Sciences, Responses to Comments, (May 2, 2023), pg. 2.

⁴ Clark Comments, pgs. 1-2.

⁵ Pub. Res. Code § 21155.2(b)(1).

⁶ Pub. Res. Code §21155.2(b)(2).

II. Backup Generator Emissions Must be Analyzed in an SCEIR

Having acknowledged that a backup generator is proposed by the Project, the Staff Report nevertheless claims that backup generator emissions need not be analyzed in the SCEA because operation of the generator during emergencies would be unpredictable.⁷ This approach is factually unsupported and inconsistent with CEQA's requirement to disclose all reasonably foreseeable project impacts.

In *East Oakland Stadium Alliance v. City of Oakland*,⁸ the Court of Appeal upheld an EIR's analysis of emissions from backup generators. The EIR's analysis assumed that generators would operate for 50 hours of testing and maintenance annually, while allocating no time for actual emergency use. In discussing the lead agency's duty to analyze backup generator emissions, the Court stated that "if the annual need for emergency generator use is reasonably foreseeable, the EIR was not entitled to disregard such use merely because it would occur at unpredictable times."⁹ The Court explained that use of a generator was reasonably foreseeable because, "[a]s noted in the EIR, some parts of the Bay Area are subject to predictable, sustained power outages undertaken to reduce the risk of fire."¹⁰ Thus, "[t]he EIR was required to make neither a generally applicable nor a worst-case assumption; rather it was required to make a reasonable estimate of likely annual use of the generators at the project site."¹¹

Here, as in *East Oakland Stadium Alliance*, the record shows that a back-up generator is a reasonably foreseeable consequence of the Project due to increasingly common Public Safety Power Shutoff events and extreme heat events. Similarly to *East Oakland Stadium Alliance*, California Air Resources Board rules allow a stationary diesel generator to operate up to 100 hours per year for maintenance and testing purposes – which could represent a reasonable estimate of the Project's backup generator use.¹² In sum, an SCEIR must be prepared which includes an analysis which reasonable estimates backup generator use.

The Staff Report also suggests that analysis of backup generator emissions would not be required because the Applicant states that the generator will not be used to provide backup power during outages, but only to operate life-safety

⁷ Impact Sciences, Responses to Comments, (May 2, 2023), pg. 3.

⁸ (2023) 889 Cal. App. 5th 1226.

⁹ *Id.* at 1252.

¹⁰ *Id.* at 1253.

¹¹ *Id.*

¹² Clark Comments, pg. 1.

equipment during emergencies.¹³ Additionally, the generator would be equipped with a particulate matter filter capable of reducing emissions by 85 percent.¹⁴ These limitations are not included in the SCEA or Conditions of Approval, and are thus nonbinding. Reliance on nonbinding mitigation does not support the City's conclusion that generator emissions would be less than significant and does not excuse the City from its duty to analyze the generator's potentially significant impacts. Rather, CEQA requires separate analysis of the Project's unmitigated and mitigated impacts,¹⁵ and further requires that any mitigation measures be enforceable as binding mitigation or in the City's Conditions of Approval.¹⁶ The SCEA does not meet CEQA's standards.

III. The Project Must Analyze and Mitigate Fire Pump Emissions

CREED LA's comments on the SCEA explained that the SCEA's air study omits any reference to a fire pump, despite project description and design drawings showing a fire pump system. Due to diesel fire pumps' emissions of both criteria air pollutants and TACs, the omission of fire pump emissions from the SCEA's air quality analysis is a failure to disclose and analyze potentially significant impacts.

The Staff Report states that the Project Applicant has confirmed the Project will utilize an all-electric fire pump, which will not generate any on-site air quality emissions.¹⁷ However, use of an all-electric fire pump is unenforceable because it is not required by a binding mitigation measure or condition of approval, and therefore improperly compresses the City's analysis and mitigation of fire pump emissions because it is relied on to reduce a potentially significant environment impact.¹⁸ CEQA requires analysis of a project's unmitigated and mitigated impacts.¹⁹ Reliance on a nonbinding statement that the Applicant will use an electric fire pump does not excuse the City from analyzing fire pump emissions.

IV. The SCEA Must Disclose Potentially Significant Health Risks from Project Emissions

CREED LA's prior comments explained that the SCEA failed to disclose the health impacts of the Project on neighboring sensitive receptors by failing to

¹³ Impact Sciences, Responses to Comments, (May 2, 2023), pg. 3.

¹⁴ *Id.* at 2.

¹⁵ *Lotus v. Dept of Transportation* (2014) 223 Cal. App. 4th 645.

¹⁶ CEQA Guidelines §15126.4(a)(2) (Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments).

¹⁷ Impact Sciences, Responses to Comments, (May 2, 2023), pg. 3.

¹⁸ *Lotus v. Dept of Transportation* (2014) 223 Cal. App. 4th 645.

¹⁹ *Id.*

quantify sensitive receptors' exposure to TACs. In response to CREED LA's comments on health risks from construction activities, the Staff Report erroneously states that CREED LA "claims that a health risk assessment (HRA) should have been conducted for the Project based on guidance from the California Office of Environmental Health Hazard Assessment (OEHHA 2015)."²⁰ The Staff Report explains that the OEHHA guidance does not formally impose requirements on this Project, and that no further response to CREED LA's comment is required.²¹

The Staff Report ignores that CEQA requires analysis of human health impacts, irrespective of OEHHA's recommendations.²² The Supreme Court has explained that CEQA requires the lead agency to disclose the health consequences that result from exposure to a project's air emissions.²³ 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.²⁴ OEHHA's recommendations (that a health risk analysis be prepared for short-term construction exposures to TACs lasting longer than 2 months) are instructive due to the duration of construction activities and the Project's proximity to numerous sensitive receptors, including residents directly adjacent to the Project site at the Gilbert Hotel.²⁵ However, CEQA requires quantification of sensitive receptors' exposure to TACs whether or not the City elects to follow OEEHA's guidance.

Regarding operational emissions, the Staff Report responds that the Project would not generate substantive on-site air quality emissions associated with the backup generator and fire pump.²⁶ This determination is not supported by substantial evidence because the Project lacks any binding measures ensuring that the generator would include a particulate matter filter and not be used for outages, or that the fire pump would be all-electric. These actions are not otherwise required by law. Therefore, without binding mitigation measures, operational health risk impacts remain potentially significant. The SCEA's discussion of TACs also undermines its conclusion that generator and pump emissions would be less than significant by explaining that "[t]he greatest potential during long-term operations

²⁰ Impact Sciences, Responses to Comments, (May 2, 2023), pg. 3.

²¹ Impact Sciences, Responses to Comments, (May 2, 2023), pg. 3-4.

²² *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184; *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 523.

²³ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 523.

²⁴ *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

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

²⁶ Impact Sciences, Responses to Comments, (May 2, 2023), pg. 4.

for exposure to TACs is from the use of heavy-duty diesel trucks and stationary generators that use diesel fuel.”²⁷

The Staff Report is nonresponsive to CREED LA’s comments that Project is inconsistent with local policies regarding health risk. Policy 1.3.1 of the City of Los Angeles’ General Plan Air Quality Element provides: “[m]inimize particulate emissions from construction sites.”²⁸ 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.

V. The SCEA Still Fails to Adequately Analyze and Mitigate Significant Noise Impacts

The Staff report is largely nonresponsive to CREED LA’s comments on the Project’s noise impacts. CREED LA commented that the SCEA impermissibly relied on a single quantitative threshold (a 75 dB maximum threshold) to determine the significance of construction noise, explaining that consideration of the increase in noise over ambient levels was also required. CREED LA presented expert evidence demonstrating that the Project’s construction would exceed the SCEA’s chosen 75 dB threshold, and result in an increase of 10 dB over existing ambient levels – a significant impact. CREED LA also presented expert evidence showing that Mitigation Measure NOI-1 would not reduce construction noise impacts to a less than 75 dB. CREED LA identified additional feasible mitigation that should be required for the Project, including noise barriers that could provide 10 to 15 dB of reduction. But the Staff Report fails to respond to any of this analysis. The Staff Report simply states that the City does not have adopted thresholds of significance for construction noise levels, and that the Project would not exceed a 75 dB threshold (without the support of any technical analysis).

CREED LA urges the CPC to require an SCEIR for the Project.

Sincerely,



Aidan P. Marshall

²⁷ SCEA, Section IV, pg. 47.

²⁸ SCEA, pg. IV-28.