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August 17, 2023

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Los Angeles City Council

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Re: Appeal of City Planning Commission Approvals for the FOUND Residences Project (Environmental Case No. ENV-2022-1049-SCEA; Case Nos. CPC-2022-1048-DB-HCA; AA-2019-476-PMEX).

Dear City Council Members, Ms. Bleemers, Mr. Song, and Ms. Lamas:

On behalf of the **Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”)**, we submit this appeal of the City Planning Commission’s (“Commission”) approval of the FOUND Residences Project (Case Nos. ENV-2022-1049-SCEA; CPC-2022-1048-DB-HCA) (“Project”), proposed by 6422 Selma Owner, LLC (“Applicant”). The scope of the Commission’s decision includes approval of a Sustainable Communities Environmental Assessment (“SCEA”) prepared by the City of Los Angeles (“City”), Density Bonus Compliance Review of On-Menu and Off-Menu Incentives, Findings, and Conditions.

On April 10, 2023¹ and May 23, 2023,² CREED LA provided comments on the Project’s SCEA explaining that the SCEA did not accurately disclose the Project’s

¹ **Attachment A:** Letter from Adams Broadwell Joseph & Cardozo (“ABJC”) to City 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) (April 10, 2023).

² **Attachment B:** Letter from ABJC to City re: Agenda Item 2 – Supplemental Comments on the FOUND Residences Project (Case Nos. ENV-2022-1049-SCEA; CPC-2022-1048-DB-HCA; AA-2019-476-PMEX) (May 23, 2023).

potentially significant health risk, air quality, energy, and noise impacts. The Staff Report prepared for the July 13, 2023 Commission hearing included responses to CREED LA's comments. Prior to the hearing, CREED LA submitted a letter addressing the inadequacies in the City's responses to CREED LA's comments, explaining that the SCEA's flaws had not been resolved, the Project continued to have potentially significant, unmitigated impacts on air quality, public health, noise and from energy use that required analysis and mitigation before the Project could be approved.³ At the July 13 Commission hearing, CREED LA members provided oral comments explaining the outstanding errors and omissions in the Project's environmental review. On August 3, 2023, the Commission mailed a Letter of Determination ("LOD") approving the Project.

This appeal is timely filed in compliance with the Los Angeles Municipal Code ("LAMC"). This letter supplements CREED LA's Appeal Application, filed concurrently herewith, and is accompanied by the required appeal fee. This appeal is based on each of the reasons set forth herein and in the attached and referenced exhibits.

CREED LA respectfully requests that the City set a hearing on this appeal, and that the City Council uphold this appeal and vacate the City Planning Commission's 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 impacts of the Project. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Los Angeles.

Individual members of CREED LA and its member organizations 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.

³ **Attachment C:** Letter from ABJC to City re: Agenda Item 11 – Comments on FOUND Residences (Case Nos. ENV-2022-1049-SCEA; CPC-2022-1048-DB-HCA; AA-2019-476-PMEX) (July 10, 2023).

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. APPEAL PROCEDURES

The LAMC Section 11.5.13(C) provides that the SCEA can be appealed to the City Council within 15 days of the Project approval becoming final, and all administrative appeals are exhausted:

When any decision-maker in any action authorized by this Chapter, other than the City Council, certifies an environmental impact report, adopts a negative declaration, a mitigated negative declaration, or a **sustainable communities environmental assessment**; or determines that the Project subject to approval under this Chapter is not subject to CEQA, that certification, approval, or determination may be appealed to the City Council, provided that:

1. all administrative appeals of the Project approval were exhausted;
2. the appeal is filed with the Department of City Planning within 15 days of the Project approval becoming final; and
3. the appeal is filed in a form and manner required by the Department of City Planning. [emphasis added]

Here, all administrative appeals of the Project approval were exhausted. First, LAMC 12.22 A.25 (g)(3) provides the Commission's approval of the Project's Off-Menu Incentives is final and not appealable.⁴ Second, LAMC 12.22 A.25(g)(2)(f) provides that the On-Menu Incentives may be appealed by "[a]n applicant or any owner or tenant of a property abutting, across the street or alley from, or having a common corner with the subject property aggrieved by the Director's decision." CREED LA is not an owner or tenant of a property abutting, across the street or

⁴ See Letter of Determination, pg. 2.

alley from, or having a common corner with the Project site. Therefore, all administrative appeals have been exhausted.

This appeal is filed within 15 days of the Project approval becoming final, and is filed on in the form and manner required by the City.

III. REASONS FOR APPEAL

A. 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).⁵ The EIR is the very heart of CEQA.⁶ “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.”⁷ 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.⁸ Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.⁹

CEQA allows for the streamlining of environmental review for “transit priority projects” meeting certain criteria.¹⁰ 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.¹¹ 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.”¹² 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.”¹³ The SCEA must then “contain

⁵ See, e.g., PRC § 21100.

⁶ *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

⁷ *Comtys. for a Better Env' v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 (“*CBE v. CRA*”).

⁸ 14 CCR § 15002(a)(1).

⁹ 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.

¹⁰ Pub. Res. Code §§ 21155, 21155.1, 21155.2.

¹¹ Pub. Res. Code § 21155.2.

¹² Pub. Res. Code § 21155.2(b)(1).

¹³ *Id.*

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.”¹⁴

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.¹⁵ A lead agency’s approval of a SCEA must be supported by substantial evidence.¹⁶

In this case, the City failed to conduct a proper analysis of the Project’s noise, air quality, and public health impacts. Furthermore, the SCEA fails to mitigate the significant effects of the Project, rendering the SCEA inadequate. The City must prepare a SCEIR in order to fully analyze and mitigate the Project’s impacts.

B. Backup Generator Emissions Must be Analyzed in an SCEIR

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.”¹⁷ But CREED LA’s comments explained that use of a back-up generator is a reasonably foreseeable consequence of the Project. In response to CREED LA’s comments, the Commission Staff Report acknowledged 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.¹⁸ Although the City acknowledged that a backup generator is proposed by the Project, the Commission Staff Report nevertheless claimed that backup generator emissions need not be analyzed in the SCEA because operation of the generator during emergencies would be unpredictable.¹⁹ In response, CREED LA provided comments explaining that this approach is factually unsupported and inconsistent with CEQA’s requirement to disclose all reasonably foreseeable project impacts.

The Commission Staff Report also suggested that analysis of backup generator emissions is not required because the Applicant stated that the generator will not be used to provide backup power during outages, but only to operate life-

¹⁴ Pub. Res. Code §21155.2(b)(2).

¹⁵ Pub. Res. Code § 21155(b)(3), (b)(4), (b)(5)

¹⁶ Pub. Res. Code §21155(b)(7).

¹⁷ SCEA, pg. IV-44, 47; Appendix B, pg. 48.

¹⁸ Impact Sciences, Responses to Comments, (May 2, 2023), pg. 2.

¹⁹ Impact Sciences, Responses to Comments, (May 2, 2023), pg. 3.

safety equipment during emergencies.²⁰ Additionally, the generator would be equipped with a particulate matter filter capable of reducing emissions by 85 percent.²¹ These limitations were 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,²² and further requires that any mitigation measures be enforceable as binding mitigation or in the City's Conditions of Approval.²³

The SCEA failed to meet CEQA's standards. The City Council must reverse the Commission's decision and find that a SCEIR is required for the Project.

C. Fire Pump Emissions Must Be Analyzed In An SCEIR

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 Toxic Air Contaminants ("TACs"), the omission of fire pump emissions from the SCEA's air quality analysis is a failure to disclose and analyze potentially significant impacts.

In response to CREED LA's comments, the Commission Staff Report stated that the Project Applicant has confirmed the Project will utilize an all-electric fire pump, which will not generate any on-site air emissions.²⁴ However, use of an all-electric fire pump is unenforceable because it is not required by law, and is not required by a binding mitigation measure or condition of approval for the Project. The City's assumption that fire pump emissions would be zero due to the use of an electric fire pump is therefore unsupported.

The fact is that the SCEA failed to analyze fire pump emissions. The Commission's belated attempt to justify this omission by asserting that the Project will use non-polluting electrical equipment is an improper *post hoc* rationalization for the errors and omissions in the SCEA. This approach has been repeatedly

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

²¹ *Id.* at 2.

²² *Lotus v. Dept of Transportation* (2014) 223 Cal. App. 4th 645.

²³ CEQA Guidelines §15126.4(a)(2) (Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments).

²⁴ Impact Sciences, Responses to Comments, (May 2, 2023), pg. 3.

rejected by the courts.²⁵ Nor would such an assumption be proper even if the SCEA had analyzed the use of an electric fire pump (which it did not), because reliance on compressed analysis and mitigation of fire pump emissions into a single step would violate CEQA's requirement that the environmental document disclose a project's unmitigated impacts, in addition to its mitigated impacts.²⁶

Reliance on a nonbinding statement that the Applicant will use an electric fire pump does not excuse the City from analyzing fire pump emissions. The City Council must reverse the Commission's decision and require staff to prepare an SCEIR which discloses and analyzes fore pump operation, which the City now acknowledges is part of the Project.

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

CREED LA's comments explained that the SCEA failed to disclose the health impacts of the Project on neighboring sensitive receptors by failing to quantify sensitive receptors' exposure to TACs. 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.²⁷ 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.²⁸

Here, the SCEA failed to quantify sensitive receptors' exposure to TACs during construction activities. For development projects like this one, the Office of Environmental Health Hazard Assessment's ("OEHHA") risk assessment guidelines 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 months should be evaluated for the duration of the project.²⁹ These recommendations are instructive because the Project's construction schedule extends for approximately two years, and construction would be in close proximity

²⁵ *Comty's for a Better Env't v. City of Richmond*, 184 Cal.App.4th at 92; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307,

²⁶ *Lotus v. Dept of Transportation* (2014) 223 Cal. App. 4th 645.

²⁷ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 523.

²⁸ *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

²⁹ 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>.

to numerous sensitive receptors, including residents directly adjacent to the Project site at the Gilbert Hotel.³⁰ And as previously discussed, CEQA requires quantification of sensitive receptors' exposure to TACs in this case whether or not the City elects to follow OEEHA's guidance.

The SCEA also failed to quantify sensitive receptors' exposure to TACs during operation. The Commission Staff Report maintained that such analysis was not required because the Project would not generate substantive on-site air quality emissions associated with the backup generator and fire pump.³¹ But this determination was 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 own discussion of TACs also undermined its conclusion that generator and pump emissions would be less than significant: "[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.**"³² The City Council must reverse the Commission's decision and find that a SCEIR is required for the Project.

E. The SCEA Failed to Adequately Analyze and Mitigate Significant Noise Impacts

CREED LA's comments identified major flaws in the SCEA's noise impacts analysis. First, 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. Second, 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. Third, CREED LA also presented expert evidence showing that Mitigation Measure NOI-1 would not reduce construction noise impacts to a less than 75 dB. Fourth, 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. The Commission Staff Report failed to meaningfully respond to any of this analysis, simply stating that the City does not have adopted thresholds of significance for construction noise levels, and that the

³⁰ SCEA, pg. IV-20; see pg. IV-33 (sensitive receptors approximately 25 meters from Project site).

³¹ Impact Sciences, Responses to Comments, (May 2, 2023), pg. 4.

³² SCEA, Section IV, pg. 47.[emphasis added].

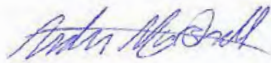
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Project would not exceed a 75 dB threshold. The City Council must reverse the Commission's decision and find that a SCEIR is required for the Project.

IV. CONCLUSION

CREED LA's appeal and attached and referenced exhibits show that the Commission lacked substantial evidence to approve the SCEA and make the associated approval findings. The City cannot approve the Project's entitlements without a legally adequate environmental document. CREED LA respectfully requests that the City set a hearing on this appeal, and that the City Council uphold this appeal and vacate the City Planning Commission's approval of the Project.

Sincerely,



Aidan P. Marshall

Attachments
APM:acp

APPLICATIONS

APPEAL APPLICATION CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) Instructions and Checklist



RELATED CODE SECTIONS

The Los Angeles Municipal Code (LAMC) Section 11.5.13 (Ordinance No. 186,338) establishes the appeal procedure to the City Council for California Environmental Quality Act (CEQA) determinations.

PURPOSE

A CEQA determination can only be appealed if a non-elected, decision-making body (ZA, APC, CPC, DIR) makes a determination for a project that is not further appealable. If a final decision on a project was made by the City Council, either as the initial decisionmaker or on appeal, the related CEQA determination is not appealable.

To initiate appeal of a CEQA appeal, this form must be completed with the required materials attached and filed within 15 calendar days from the final administrative decision of the entitlement application.

GENERAL INFORMATION

Appealable CEQA determinations:

- Certified Environmental Impact Report (EIR)
- Sustainable Communities Environmental Assessment (SCEA)
- Mitigated Negative Declaration (MND)
- Negative Declaration (ND)
- Categorical Exemption (CE)
- Sustainable Exemption (SE)

Non-appealable CEQA determinations:

- Addenda to any of the above-listed CEQA determinations
- Findings made pursuant to CEQA Guidelines Section 15162
- An action in which the determination does not constitute a project under CEQA

All CEQA appeals are heard by the City Council. This form is only for appeals related to determinations made by Los Angeles City Planning. All other CEQA appeals shall be filed with the City Clerk pursuant to LAMC Section 197.01.

A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council. Persons affiliated with a CNC may only file as an individual on behalf of self.

