

## LETTER 5



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### VIA E-MAIL

January 22, 2025

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**RE: Comment on the Draft Environmental Impact Report of Park Tower Student Housing Project of the City of Long Beach (5150 E. Pacific Coast Highway, Long Beach, California; APN 7220-018-009; SCH Number 2024080441)**

Dear Ms. Casillas:

On behalf of the **Western States Regional Council of Carpenters** (“**Western Carpenters**” or “**WSRCC**”), my Office is submitting these comments on the Draft Environmental Impact Report (“**Draft EIR**”) of the Park Tower Student Housing Project (“**Project**”) of the City of Long Beach (“**City**”), located at 5150 E. Pacific Coast Highway, Long Beach, CA (“**Project Site**”).

The Western Carpenters is a labor union representing almost 90,000 union carpenters in 12 states, including California, and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

According to the Notice of Availability (“**NOA**”) of the Project’s Draft EIR:

“The Project will adaptively **reuse** an **existing seven-story office** building with **three levels** of subterranean **parking** located at 5150 Pacific Coast Highway in the City of Long Beach (City), California. The existing office building is approximately **120,000 square feet** (sf), of which **109,600 sf** is **currently leased**. The Project would involve the **adaptive reuse** of the existing building into a **private dormitory (housing for students)** with **149 student residential suites (593 beds)**. The Project is proposing a **General Plan Amendment** from the current **Community Commercial**

(CC) **Placetype** to the **Neighborhood Serving Center** (NSC-Moderate) Placetype, which would **permit residential** uses. The Project would also require a **Zoning Code Amendment/Map Change** to change the existing zone **from Community Commercial Automobile Oriented (CCA)** to **Mixed-Use (MU 3)** to allow for the Project's **student residential** uses and to **enable** the Project to take advantage of the adaptive **reuse development** standards. The Project would also require the **approval** of a **Conditional Use Permit (CUP)** to allow the "**Special Group Residence**" and **Site Plan review** of adaptive reuse."

(NOA, *emph. added.*)

The Project's above-mentioned description, as well as state agency comments confirm that the Project may have significant impacts, including transportation, related air quality, greenhouse gas emissions, noise, and hazards impacts on highways and freeways, which need to be addressed. Hence, it is of utmost importance that the Project be implemented by *skilled contractors* to minimize the construction impacts and hazards to the surrounding environment from the Project.

Individual members of the Western Carpenters live, work, and recreate in the City and surrounding communities and would be directly affected by the Project's environmental impacts.

The Western Carpenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearing and proceeding related to this Project. (Gov. Code, § 65009, subd. (b); Pub. Res. Code, § 21177, subd. (a); see *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; see also, *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.)

The Western Carpenters incorporates by reference all comments raising issues regarding the Environmental Impact Report (EIR) submitted prior to certification of the EIR for the Project. See *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project's environmental documentation may assert any issue timely raised by other parties).

Moreover, the Western Carpenters requests that the City **provide advance notice** for any and all notices referring or related to the Project issued under the California Environmental Quality Act (**CEQA**) (Pub. Res. Code, § 21000 *et seq.*), and the California Planning and Zoning Law ("**Planning and Zoning Law**") (Gov. Code, §§

65000–65010). California Public Resources Code Sections 21092.2, and 21167(f) and California Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency’s governing body.

**REQUEST FOR CONTINUANCE AND EXTENSION OF COMMENT PERIOD TO COMPLY WITH CEQA:**

As an initial matter, **we hereby object and request** that the City **continue and extend** the EIR comment period, since the City failed to duly upload *all* of the EIR-related documents for public review on December 2, 2024. Specifically, Appendix B of the Draft EIR – one of the most critical appendices related to air quality and greenhouse gas emissions – was not available either on the City’s or the state’s CEQAnet websites as of December 2, 2024 and through December 11, 2024. (**Exhibit Q** [December 11, 2024 Emails to and from the City re missing Appendix B].) The City uploaded that Appendix B on December 11, 2024 only after we brought the missing Appendix to the City’s attention on that day. (*Ibid.*)

CEQA requires that the lead agency provide to the public not only the EIR itself but also its appendices and related studies. “Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be *readily available* for public examination and *shall be submitted* to all clearinghouses which assist in public review.” (CEQA Guidelines § 15147; see also Public Resources Code (“PRC”) § 21091 [requiring 45 days for comment period of an EIR].)

In light of the foregoing, we request that the City extend the EIR comment period.

**I. THE CITY SHOULD REQUIRE THE USE OF A LOCAL WORKFORCE TO BENEFIT THE COMMUNITY’S ECONOMIC DEVELOPMENT AND ENVIRONMENT**

As we have previously indicated in our comment to the EIR’s Notice of Preparation dated September 13, 2024, to reduce the development (demolition, construction) impacts and risks (hazards) on the surrounding environment, the City should require the Project to be implemented using a local workers who have graduated from a Joint Labor-Management Apprenticeship Program approved by the State of California, have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state-approved apprenticeship training

program, or who are registered apprentices in a state-approved apprenticeship training program.

Community benefits such as local hire can be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

[A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

(**Exhibit A** [March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling]; **Exhibits B-C** [Experts' Background].)

Workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the University of California, Berkeley Center for Labor Research and Education concluded:

[L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California's workforce can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.<sup>1</sup>

Furthermore, workforce policies have significant environmental benefits given that they improve an area's jobs-housing balance, decreasing the amount and length of job commutes and the associated greenhouse gas (GHG) emissions. In fact, on May 7,

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<sup>1</sup> California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, available at <https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf>.

2021, the South Coast Air Quality Management District found that that the “[u]se of a local state-certified apprenticeship program” can result in air pollutant reductions.<sup>2</sup>

Locating jobs closer to residential areas can have significant environmental benefits. As the California Planning Roundtable noted in 2008:

People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.<sup>3</sup>

Moreover, local hire mandates and skill-training are critical facets of a strategy to reduce vehicle miles traveled (“**VMT**”). As planning experts Robert Cervero and Michael Duncan have noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must match those held by local residents.<sup>4</sup> Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city’s First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When

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<sup>2</sup> South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10>.

<sup>3</sup> California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, *available at* <https://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf>

<sup>4</sup> Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? *Journal of the American Planning Association* 72 (4), 475-490, 482, *available at* <http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf>.

needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

Recently, the State of California verified its commitment towards workforce development through the Affordable Housing and High Road Jobs Act of 2022, otherwise known as Assembly Bill No. 2011 (“**AB2011**”). AB2011 amended the Planning and Zoning Law to allow ministerial, by-right approval for projects being built alongside commercial corridors that meet affordability and labor requirements.

The City should consider utilizing local workforce policies and requirements to benefit the local area economically and to mitigate greenhouse gas, improve air quality, and reduce transportation impacts.

## **II. THE CITY SHOULD IMPOSE TRAINING REQUIREMENTS FOR THE PROJECT’S CONSTRUCTION ACTIVITIES TO PREVENT COMMUNITY SPREAD OF COVID-19 AND OTHER INFECTIOUS DISEASES**

Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupational Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19. Infections that can be spread during construction work are not limited to COVID-19.

Western Carpenters recommend that the Lead Agency adopt additional requirements to mitigate public health risks from the Project’s construction activities. Western Carpenters requests that the Lead Agency require safe on-site construction work practices as well as training and certification for any construction workers on the Project Site.

In particular, based upon Western Carpenters’ experience with safe construction site work practices, Western Carpenters recommends that the Lead Agency require that while construction activities are being conducted at the Project Site:

### **Construction Site Design:**

- The Project Site will be limited to two controlled entry points.
- Entry points will have temperature screening technicians taking temperature readings when the entry point is open.

- The Temperature Screening Site Plan shows details regarding access to the Project Site and Project Site logistics for conducting temperature screening.
- A 48-hour advance notice will be provided to all trades prior to the first day of temperature screening.
- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening area. Please reference the Apex temperature screening site map for additional details.
- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

#### **Testing Procedures:**

- The temperature screening being used are non-contact devices.
- Temperature readings will not be recorded.
- Personnel will be screened upon entering the testing center and should only take 1-2 seconds per individual.
- Hard hats, head coverings, sweat, dirt, sunscreen or any other cosmetics must be removed on the forehead before temperature screening.
- Anyone who refuses to submit to a temperature screening or does not answer the health screening questions will be refused access to the Project Site.
- Screening will be performed at both entrances from 5:30 am to 7:30 am.; main gate [ZONE 1] and personnel gate [ZONE 2]
- After 7:30 am only the main gate entrance [ZONE 1] will continue to be used for temperature testing for anybody

gaining entry to the project site such as returning personnel, deliveries, and visitors.

- If the digital thermometer displays a temperature reading above 100.0 degrees Fahrenheit, a second reading will be taken to verify an accurate reading.
- If the second reading confirms an elevated temperature, DHS will instruct the individual that he/she will not be allowed to enter the Project Site. DHS will also instruct the individual to promptly notify his/her supervisor and his/her human resources (HR) representative and provide them with a copy of Annex A.

### **Planning**

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-hands meetings and all-hands lunches) communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.<sup>5</sup>

The United Brotherhood of Carpenters and Carpenters International Training Fund has developed COVID-19 Training and Certification to ensure that Carpenter union members and apprentices conduct safe work practices. The City should require that all

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<sup>5</sup> See also The Center for Construction Research and Training, North America's Building Trades Unions (April 27 2020) NABTU and CPWR COVID-19 Standards for U.S. Construction Sites, available at [https://www.cpwr.com/sites/default/files/NABTU\\_CPWR\\_Standards\\_COVID-19.pdf](https://www.cpwr.com/sites/default/files/NABTU_CPWR_Standards_COVID-19.pdf); Los Angeles County Department of Public Works (2020) Guidelines for Construction Sites During COVID-19 Pandemic, available at [https://dpw.lacounty.gov/building-and-safety/docs/pw\\_guidelines-construction-sites.pdf](https://dpw.lacounty.gov/building-and-safety/docs/pw_guidelines-construction-sites.pdf).

construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

Western Carpenters has also developed a rigorous Infection Control Risk Assessment (“**ICRA**”) training program to ensure it delivers a workforce that understands how to identify and control infection risks by implementing protocols to protect themselves and all others during renovation and construction projects in healthcare environments.<sup>6</sup>

ICRA protocols are intended to contain pathogens, control airflow, and protect patients during the construction, maintenance and renovation of healthcare facilities. ICRA protocols prevent cross contamination, minimizing the risk of secondary infections in patients at hospital facilities.

The City should require the Project to be built using a workforce trained in ICRA protocols.

### **III. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

#### **A. Background Concerning the California Environmental Quality Act**

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. CEQA Guidelines § 15002(a)(1). “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.’ [Citation.]” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *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.

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. CEQA Guidelines § 15002(a)(2) and (3). *See also, Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta*

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<sup>6</sup> For details concerning Western Carpenters’ ICRA training program, *see* <https://www.swmsctf.org/courses/icra-best-practices-in-health-care-construction/>

*Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal. 3d 376, 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines § 15002(a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding 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” specified in CEQA Pub. Res. Code § 21081. CEQA Guidelines § 15092(b)(2)(A–B).

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘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.’” *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added) (quoting *Laurel Heights*, 47 Cal. 3d at 391, 409 fn. 12). Drawing this line and determining whether the EIR complies with CEQA’s information disclosure requirements presents a question of law subject to independent review by the courts. *Sierra Club v. Cnty. of Fresno* (2018) 6 Cal. 5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102, 131. As the court stated in *Berkeley Jets*, 91 Cal. App. 4th at 1355:

A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.

“The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR’s function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. [Citation.] For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made.” *Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449–450).

Where the Lead Agency chooses to dispose of CEQA by asserting a CEQA exemption, it has a duty to support its CEQA exemption findings by substantial evidence, including evidence that there are no applicable exceptions to exemptions. This duty is imposed by CEQA and related case law. Guidelines § 15020 [“The Lead Agency shall not knowingly release a deficient document hoping that public comments will correct defects in the document.”]; *see also*, *Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn.* (2015) 242 Cal.App.4th 555, 568 [“The lead agency has the burden to demonstrate that a project falls within a categorical exemption and the agency’s determination must be supported by substantial evidence”]; *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 732 [agency is required to consider exemption exceptions “where there is some information or evidence in the record that the project might have a significant impact.”]

The duty to support CEQA (and/or exemption) findings with substantial evidence is also required by the Code of Civil Procedure and case law on administrative or traditional writs. Under Code of Civil Procedure (“CCP”) § 1094.5(b), an abuse of discretion is established if the decision is not supported by the findings, or the findings are not supported by the evidence. CCP § 1094.5(b). In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515 (“*Topanga*”), our Supreme Court held that “implicit in [Code of Civil Procedure] section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” The agency’s findings may “be determined to be sufficient if a court ‘has no trouble under the circumstances discerning the analytic route the administrative agency traveled from evidence to action.’” *West Chandler Blvd. Neighborhood Ass’n vs. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1521- 1522. However, “mere conclusory findings without reference to the record are inadequate.” *Id.* at 1521 (finding city council findings conclusory, violating *Topanga*).

Further, CEQA exemptions must be narrowly construed to accomplish CEQA’s environmental objectives. *California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 187 (“*California Farm*”); *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697 (“These rules ensure that in all but the clearest cases of categorical exemptions, a project will be subject to some level of environmental review.”)

Finally, CEQA procedures reflect a preference for resolving doubts in favor of environmental review. *See*, Pub. Res. Code § 21080(c) [dispose of EIR only if “there is no substantial evidence, in light of the *whole record* before the lead agency, that the project *may* have a significant effect on the environment” or “revisions in the project . . . . Would avoid the effects or mitigate the effects to a point where *clearly* no significant effect on the environment would occur, *and* . . . .” Emph. added.]; Guidelines §§ 15061(b)(3) [common sense exemption only “where it can be seen with certainty . . . .”]; 15063(b)(1) [prepare an EIR “if the agency determines that there is substantial evidence that *any* aspect of the project, either *individually* or *cumulatively*, *may* cause a significant effect on the environment, *regardless* of whether the overall effect of the project is adverse or beneficial”]; 15064(h) [need to consider cumulative impacts of past, other current and “probable future” projects]; 15070 [prepare a negative declaration only if “no substantial evidence, *in light of the whole record* before the agency, that the project *may* have a significant effect on the environment,” or project “revisions would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, *and* (2) there is no substantial evidence, in light of the whole record before the project, that the project as revised *may* have a significant effect on the environment” emph. added]; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83-84 [interpret “significant impacts” so as “to afford the fullest possible protection”].

#### **IV. THE DRAFT EIR IS LEGALLY INADEQUATE AS IT OMITTS CRITICAL INFORMATION.**

The Draft EIR suffers from several procedural flaws and omissions. These flaws and omissions preclude good faith disclosures, meaningful information and public participation by failing to provide accurate information about the Project’s scope and resultant impacts. In addition, the EIR is based on flawed and erroneous baseline assumptions, and also its findings are not supported by any credible or substantial evidence. As such, the Draft EIR is legally inadequate, as detailed below.

##### **A. The Project Description Is Not Accurate, Stable or Finite to Enable Meaningful Evaluation of Project Impacts.**

The Draft EIR indicates the following discretionary approvals needed for the Project:

The Project would require adoption by the Long Beach Planning Commission/City Council and the following discretionary approvals:

- General Plan Amendment/Map changing Community Commercial (CC) Land Use District to Land Use Element (LUE) Neighborhood Serving Center or Corridor (NSCModerate) Placetype;
- Zoning Code Amendment/Map Change from Community Commercial Automobile-Oriented (CCA) Zoning District to Mixed Use (MU-3) Zoning District;
- Conditional Use Permit for the Special Group Residence use for the dormitory use;
- Site Plan Review for the Adaptive Reuse of the building;
- Building Permits for the change in use of the building;
- Certification of the EIR for the Project;
- A street improvement encroachment permit from Caltrans for activities within the Pacific Coast Highway right-of-way; and
- Other ministerial approvals as needed and as may be required.

(DEIR, p. ES-3.)

And yet, the record in this case reveals that *more* discretionary actions are needed, and the City improperly discounts or omits some of those. For example, per the City's Development Bureau's letter, the Project's *basement encroaches* into the *highway* and – if used by the Project – requires a street vacation:

- Based on the plans, it appears that the **existing basement encroaches** into the **Pacific Coast Highway sidewalk**. The applicant shall confirm that this is the case. If it does indeed encroach, Public Works has no record of a vacation of area below Pacific Coast Highway to allow for the subterranean encroachment. Provide documentation of **this vacation**. If one does not exist, the applicant **will need to process** the subterranean **vacation**.

(**Exhibit D**, p. 1, *emph. added* [November 18, 2022 City of Long Beach Letter].)

The EIR's omission of the vacation issue is critical since there are several requirements for street vacation that need to be met by the Project applicant before such vacation can be deemed proper. Streets and Highway (“**S&H**”) Code defines “vacation” as “the complete or partial abandonment or termination of the public right to use a street, highway, or public service easement.” (S&H Code § 8309.) The code defines a “street” and “highway” as “all **or part of, or any right in**, a state

highway **or other public** highway, road, **street**, avenue, **alley**, lane, driveway, place, court, trail, **or other public right-of-way or easement**, or purported public street or highway, and rights connected therewith, including, **but not limited to**, restrictions of access or abutters' rights, **sloping easements**, or **other incidents** to a **street** or highway.” (S&H Code § 8308, *emph. added.*)

S&H also provides that “[t]his part shall be **liberally** construed in order to effectuate its purposes.” (*Id.* § 8310, *emph. added.*)

In turn, the Long Beach Municipal Code section 20.08.170 requires the following findings to be made for street vacation before one can be approved:

C. In evaluating a right-of-way vacation, the City needs to make the following findings:

1. The City right-of-way *will not* be needed for *present* or *future* public right-of-way purposes.
2. The *continued access* to any City or public utility services and improvements will be *properly reserved*.
3. The right-of-way vacation is consistent with *goals* and *policies* of the General Plan referencing specific applicable provisions.

(Long Beach Municipal Code, *emph. added.*)<sup>7</sup>

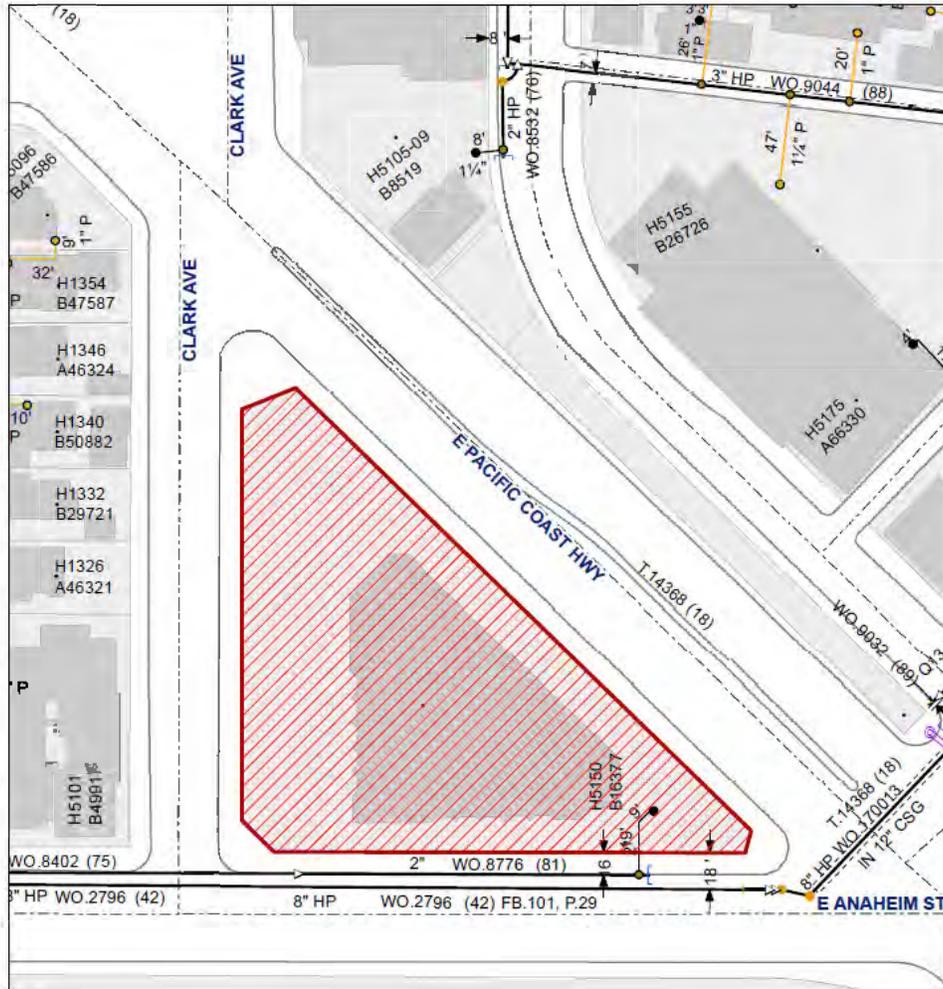
But this finding was not made by the City or analyzed in the EIR. Neither can such a finding be reasonably made. Specifically, per the City’s own comments, the Project may have significant traffic impacts and the General Plan requires street *dedications* to widen the adjacent streets from 70 feet to 80 feet. (**Exhibit E** [7/1/2022 City of Long Beach Pre-Development Meeting Minutes].) The potential of traffic impacts and the need of street-widening is also critical since the Project proposes to bring in 593 people to the Project site and potentially 593 cars and related daily trips, the Project is surrounded by 3 streets, the Project site is triangular in shape, it is located near residential areas, in an earthquake and liquefaction zone, and may also have or cause fire and other hazards requiring adequate street infrastructure and evacuation possibility, which will only be exacerbated if the City has no ability to widen the streets.

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<sup>7</sup> See available at:

[https://library.municode.com/ca/long\\_beach/codes/municipal\\_code?nodeId=TTT20SU\\_CH20.08\\_DEST\\_20.08.170RI-WVA](https://library.municode.com/ca/long_beach/codes/municipal_code?nodeId=TTT20SU_CH20.08_DEST_20.08.170RI-WVA)

In addition, the Project's proposed transient residential uses – unlike the current office uses of the Project site – will require resizing of underground utilities, which is further complicated by the isolated location of the Project from other uses, as shown on the screenshot below, and will require street improvements and changes:



As the City concedes:

- Long Beach Energy Resources currently maintains an active gas service line feeding the existing building on the lot that will **need** to be **upsized/renewed** if **loads increase** due to the conversion. See GIS map (attached) for approximate location of the service.
- If additional new gas service or renewal of existing service is needed for the proposed conversion, Long Beach Energy Resources will need to review and approve the location for the meter and **buried service line** to be installed. Please consider that the routing of the buried gas service line

and clearance requirements for meter may impact the design of the development.

(**Exhibit D**, p. 2, *emph. added*.)

Furthermore, the City's documents show that there are current plans by Caltrans for street modifications near the Project, including on Pacific Coast Highway. (**Exhibit S**, p. 6.)

As such, the EIR's omission of this vacation issue is prejudicial in light of the Project's traffic and utilities impacts, and the associated risks to the surrounding environment.

**Second**, the Draft EIR omits the Conditional Use Permit required for open space, lot coverage, and most importantly *parking reduction* and the associated impacts of the Project apparently improperly relying on AB 2097 for parking reduction. It claims that "AB 2097 applies to this property site which eliminates the requirement for minimum parking requirements for the change in use." (**Exhibit D**, p. 1.)

To be clear, unlike the enumerated discretionary approvals listed in the Draft EIR (DEIR, p. ES-3) and quoted above, which lists only *one* conditional use permit, the Project Applicant has initially sought *two* conditional use permits, one of which was for *parking reduction* and other requirements that would be changed, such as open space. (**Exhibit F** [Project Applicant's invoice showing payment for *two* (2) CUPs].)

And the Project Applicant himself conceded that the Project has an issue with parking that needs to be addressed, stating:

**In addition to the 17 surface being removed**, there will be a **net loss of 35 parking spaces in the underground structure**. Regarding parking, we would also like the City to opine on whether/how AB 2097 would apply to the project. This bill will go into effect in January and may offer some relief from parking requirements for the project.

(**Exhibit V**, p. 4 [October 26, 2023 email from Project Applicant, which includes the quoted October 20, 2022 Email from Project Applicant].)

Per the City's own records, the Project includes Adaptive Reuse to address code deficiencies (open space, parking, density). (**Exhibit W** [November 3, 2022 Email between City staff].)

And later, the Project Applicant also conceded that the Project may not necessarily be eligible for AB 2097 and requested the City's opinion on it, noting: "The project site is eligible for AB2097 under the 2016 SCAG map, but not LBTransit map. Have we had

a determinate on which map we will use for the parking exemption allowance?” (*Ibid.*)

But rather than address this issue meaningfully, the City swept it under the rug, excluded the additional Adaptive Reuse CUP, and summarily claimed that AB 2097 applies to the Project without further elaboration. Not so.

In particular, AB 2097 provides:

SEC. 2. **Section 65863.2** is added to the Government Code, to read:

**65863.2.** (a) A public agency shall **not** impose or enforce any minimum automobile parking requirement on a **residential**, commercial, or other development **project if** the project is located within **one-half mile** of public transit.

(b) **Notwithstanding** subdivision (a), a city, county, or city and county **may** impose or enforce minimum automobile parking requirements on a project that is located within **one-half mile** of public transit **if** the public agency makes **written findings**, within **30 days** of the receipt of a completed application, that not imposing or enforcing minimum automobile parking requirements on the development would have a **substantially negative** impact, supported by a **preponderance** of the **evidence** in the record, on **any** of the following:

(1) The city’s, county’s, or city and county’s ability to meet its share of the regional housing need in accordance with Section 65584 for low- and very low income households.

(2) The city’s, county’s, or city and county’s ability to meet any special housing needs for the elderly or persons with disabilities identified in the analysis required pursuant to paragraph (7) of subdivision (a) of Section 65583.

(3) Existing residential or commercial parking within one-half mile of the housing development project.

(c) For a housing development project, subdivision (b) shall not apply if the housing development project satisfies any of the following:

(1) The development dedicates a minimum of **20 percent** of the **total number of housing** units to very low, low-, or moderate-income households, students, the elderly, or persons with disabilities.

(2) The development contains fewer than 20 housing units.

- (3) The development is subject to parking reductions based on the provisions of any other applicable law.
- (d) Notwithstanding subdivision (a), an event center shall provide parking, as required by local ordinance, for employees and other workers.
- (e) For purposes of this section:
- (1) “Housing development project” means a housing development project as defined in paragraph (2) of subdivision (h) of Section 65589.5.
  - (2) “Low- and very low income households” means the same as “lower income households” as defined in Section 50079.5 of the Health and Safety Code.
  - (3) “Moderate-income households” means the same as “persons and families of moderate income,” as defined in Section 50093 of the Health and Safety Code.
  - (4) “Public agency” means the state or any state agency, board, or commission, any city, county, city and county, including charter cities, or special district, or any agency, board, or commission of the city, county, city and county, special district, joint powers authority, or other political subdivision.
  - (5) “Public transit” means a major transit stop as defined in Section 21155 of the Public Resources Code.
  - (6) “**Project**” does not include a project where any portion is designated for use as a hotel, motel, bed and breakfast inn, **or other transient lodging**, except where a portion of a housing development project is designated for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code.

Based on the above-noted, the Project clearly does not qualify for a parking exemption or reduction because:

- 1) The Project here *is* a *transient lodging* – it is a dormitory – and hence, an exception from AB 2097;
- 2) The Project here is *not* within ½ mile of transit as defined by AB 2097 and PRC referenced therein; and
- 3) The Project here does *not* provide *any* affordable housing to eliminate the City’s possibility to find special adverse impacts on public health and safety.

That dormitories are a transient lodging facility is confirmed by various agencies and cases. For example, City of Los Angeles requires a checklist for transient facilities, which lists dormitories as an example of those. (**Exhibit G**<sup>8</sup> [City of LA Supplemental Plan Review Checklist for Transient Lodging Rooms].) Various courts have considered dormitories as transient lodging. (*Carolyn v. Orange Park Community Assn.* (2009) 177 Cal.App.4th 1090, 1100 [“ ‘transient lodging’ (like boarding houses, dormitories, resorts, hotels, motels, and inns) and therefore qualify as a public accommodation in its entirety”]; *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 922 [“In that decision the commission also determined that the term ‘residential customer’ in section 739 included single-family houses, apartments, condominiums, and mobilehomes, but excluded transient trailerparks, hotels and motels, and other places of temporary occupancy such as hospitals and college dormitories.”])

Yet, the Draft EIR is silent on this issue altogether and improperly presumes that the student dormitory here is covered by AB 2097.

Moreover, there is no showing that the Project is within a ½ mile of a qualifying transit stop or that it provide affordable units. (DEIR, p. 4.12-1—4.12-2; 4.12-9.) The Draft EIR simply claims that the Project is within 0.5 miles of a public transit stop. (DEIR, p. 4.12-9 or 4.12-11.) It notes: “Alternative 2 would be subject to AB 2097 parking requirements and would not enforce minimum parking requirements as the Project Site is located within one-half mile of **public transit options including LBT** bus service and the **CSULB Beachside shuttle**.” (DEIR, p. ES-18, *emph. added*.) But LBT is *not* a qualifying major transit stop by itself. AB 2097 defines “public transit” as: “(5) “Public transit” means a *major transit* stop as defined in Section 21155 of the Public Resources Code.” Under the referenced PRC § 21155(b): “A major transit stop is as defined in Section 21064.3, except that, for purposes of this section, it also includes *major transit stops* that are included in the applicable regional transportation plan.” And, under Public Resources Code § 21064.3:

“Major transit stop” means a site containing any of the following:

- (a) An **existing rail** or **bus rapid transit** station.
- (b) A **ferry terminal** served by either a bus or rail transit service.

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<sup>8</sup> Also available here: [https://ladbs.org/docs/default-source/forms/plan-check-2017/supplemental-plan-review-checklist-no-6---transient-lodging.pdf?sfvrsn=b881f953\\_6](https://ladbs.org/docs/default-source/forms/plan-check-2017/supplemental-plan-review-checklist-no-6---transient-lodging.pdf?sfvrsn=b881f953_6)

(c) The **intersection of two or more major bus routes** with a **frequency** of service interval of **20 minutes or less** during the morning and afternoon **peak** commute periods.

(Emph. added.)

There is no indication that the LBT here fits the definition of either PRC sections 21155 or 21064.3, including the requirement that there be at least one other intersecting bus or the requirement of the 20-minute interval frequency of service. To the contrary, based on the Draft EIR's descriptions, the LBT buses appear to be traveling only east/west – i.e., do not intersect.

As for the CSULB shuttle, there is no clear record or assurance of any *existing* CSULB Beachside shuttle that serves or will serve the Project site.

Another critical consideration that the DEIR fails to acknowledge is that most student dormitories are located *adjacent* to universities or colleges. This Project is, however, different. As the traffic engineer commented for this Project: “• Land use code 226 (Off-Campus Student Apartment [Mid-Rise]) provides trip rates for the “Adjacent to Campus” land use subcategory, which does not apply to the Project as it is over **0.5 miles from CSULB.**” (Exhibit J [Traffic Engineer's comments/Planner to DB Applicant Email of March 27, 2024].) As such, the Project students will have to use their cars to be able to get to the University and also address their living needs and necessities, such as shop for food.

Since the Draft EIR fails to provide an accurate Project description of all the discretionary approvals and changes the Project seeks and is based on flawed assumptions, the Draft EIR's project description is inaccurate, incomplete, and non-finite, as a matter of law.

**Third**, despite our office's California Public Records Act (“**PRA**”) requests and the City's productions as of the date of this comment letter, we have not found the Project's proposed plans and precise changes to the interior and exterior of the Project site. Indeed, the Draft EIR concedes that the Project plans are **not yet** finalized:

“Project plans have **not yet been** developed to identify specific Project features that would support reductions in electrical usage, adjustments were made to the California Emissions Estimator Model (CalEEMod) modeling to represent that the Project would comply with the 2022 California Building Standards Code (2022 CCR Title 24).”

(DEIR, p. 4.6-10, *emph. added.*)

For this reason, too, the Draft EIR fails to provide an accurate complete and finite project description to allow meaningful impact analysis.

Recently, a similar project and its EIR were struck down by the court for an inaccurate project description. The court stated:

In this case, Millennium’s failure to present any concrete project proposal, instead choosing concepts and “impact envelopes” rather than an accurate, stable, and finite project, was an obstacle to informed public participation, “even if we cannot say such input would have changed the project ultimately selected and approved.” (*Washoe Meadows, supra*, 17 Cal.App.5th at p. 290, 225 Cal.Rptr.3d 238.) Accordingly, the trial court correctly invalidated the EIR and granted the CEQA writ petition.

*Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 20

The Draft EIR here suffers from the flaws similar to those in *StoptheMillenniumHollywood.com*, and is legally flawed and inadequate, as a matter of law.

## **B. The Draft EIR’s Alternatives Are Legally Inadequate and Impermissibly Leave Out Feasible Alternatives.**

The Draft EIR’s alternatives are legally inadequate as they omit feasible alternatives, reject alternatives by legally misconstruing CEQA’s feasibility requirement, or simply provide legally and factually inaccurate descriptions of alternatives.

This, in part, stems from the narrowly-drawn project objectives, which appear to improperly simply mirror the desired Project rather than provide options to devise an alternative with less environmental impacts, as CEQA requires.

Specifically, the Draft EIR provides the following *objectives*:

- Fulfill the city’s **housing** goals by improving access to high quality **housing** and **expanding student housing** opportunities in proximity to open space, public transportation, and a wide range of services and goods.
- Promote **sustainable development** through the **adaptive reuse** of an existing seven-story office building into a **593-bed student** housing development that includes supportive uses and amenities that promote interaction and communication between students such as large lounge areas and active outdoor recreational areas.

- Promote **pedestrian** and **bicycle safety** and **access** to the Project Site by engaging with the existing dedicated bike throughfare along Pacific Coast Highway with bicycle parking and lockers on the subterranean parking level 1.
- **Increase access** to **alternative** transportation options on the Project Site including **zip cars** and **electric scooters**. Increase **accessibility** to the Project Site through a **dedicated ride share** pick-up and drop-off locations along East **Anaheim Street**.
- Provide a development that complements and improves the **visual character** of the area by connecting with the surrounding urban environment through a high level of architectural design, including light materiality, landscape features, and active ground floor uses with open space amenities.
- Provide **safe student housing** through terraced landscape buffers and a security fence and gate.
- Create a development with **high quality design** that supports environmental sustainability through energy efficiency, **water conservation**, and the **reduction** of **greenhouse gas emissions** through such features as **solar photovoltaic** power, electric vehicle charging stations, energy-efficient appliances, water efficient plumbing fixtures and fittings, and water-efficient landscaping.

(DEIR, p. ES-2—3, *emph. added.*)

The above-noted objectives do not explain *how* a *student dormitory* increases *housing* in Long Beach or *why* does the Project necessarily need to increase *housing* or *why* can't it simply add more commercial uses or change the type of commercial uses at the Project Site. As yet another evidence of an attempt to draft narrow objectives to precisely mirror the desired project is the EIR's reference to 593 beds in the Project objectives.

Notably, based on these narrowly-drafted objectives and for the noted reasons, the City rejects *two* alternatives of **New Office Tenant Alternative** and **Fewer Unit Alternative** and claims that those are infeasible as they do not allow development of the site with student housing to meet housing demands. (DEIR, p. 5-86.)

In the words of the Court, which found improper alternatives and improper objectives in an analogous situation:

In taking this artificially narrow approach for describing the project objectives, the County ensured that the results of its alternatives analysis would be a foregone conclusion. It also, as a result, transformed the EIR's

alternatives section—often described as part of the “core of the EIR” (*In re Bay-Delta, supra*, 43 Cal.4th at p. 1162)—into an empty formality.

(*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 692.)

As such, the EIR is defective for relying on *improper objectives* as described above.

And, as a result and derivatively, the EIR is also flawed for proposing a legally inadequate set of alternatives, which are, in addition, legally flawed by themselves.

### 1. No Build/No Project - Alternative 1

The Draft EIR’s description of the No Build/No Project alternative includes:

“The existing **office building** is approximately **120,000 sf**, of which **109,600 sf** is currently **leased** (as of January 2024). The western side of the Project Site adjacent to Clark Avenue includes a surface parking lot, driveway, and landscaping. There is signage for the existing office building on the northern corner of the Project Site along Pacific Coast Highway.”

(DEIR, p. ES-18, *emph. added*.)

The Draft EIR does not specify what kind of offices or commercial uses are present on site. The communications we have obtained from the City indicate that those commercial uses may be medical offices or may be general uses. The Draft EIR in a different section briefly describes the Project site as a medical office site. (Draft EIR, p. 4.9-3 [“medical office building”].) But the information on Internet shows that the Project site is advertised for lease space unrelated to medical offices, and the only medical office space we could find at the Project Site was pro-health medical services at Suite #500. (**Exhibits H-I** [Printouts from website re 5150 Pacific Coast Hwy, Long Beach, CA].)

As the City’s own communications confirm (**Exhibit J** [City email of March 27, 2024 to DB Applicant re types of uses, i.e., medical or general offices] & **Exhibit K** [City email of Feb. 14, 2023 asking: “Do you know the current occupancy of the building? Empty, half full, full? This could play a substantial role in determining the CEQA baseline, and in turn, the feasibility of clearing CEQA for the project with an IS/MND or a focused EIR. Total building area is approximately [sic.] 120,000 sf., and 109,600 sf. is currently leased.”]), it is important to verify the types of uses on the Project site in order to accurately determine the environmental impacts of the *proposed* Project and alternatives and their impacts as compared to such uses.

Since the EIR fails to identify this critical information about the types of uses at the Project Site, it fails to serve its informational goal by providing the information on the No Build/No Project Alternative.

In addition, the EIR fails to specify the number of subterranean or surface parking spaces that exist on the Project site, although all other Alternatives propose to remove the surface parking and rely on the subterranean parking only. Notably, as noted earlier, per the City's records, 17 surface parking spaces and also 34 subterranean parking spaces will be removed by the Project.

As shown in the Alternatives below, the Draft EIR provides a different count of parking stalls per Alternatives 2-4, even though all of those alternatives utilize *only* the subterranean three-level parking and therefore cannot be increased. Notably, even with the lower parking space number mentioned in the Draft EIR for the Project, some of the provided parking will be *tandem*, i.e., back-to-back:

The Project would provide **0.61 spaces** per bed, which would result in **364 proposed vehicle parking stalls**. The Project would continue to encourage the use of walking, cycling, and transit by maintaining existing pedestrian, bicycle, and transit access to the Project Site. The Project would also provide **150 new parking spaces** and a **rideshare** drop-off and drop-off area, which would further encourage the use of cycling and carpooling.

(DEIR, p. 4.12-10, *emph. added.*)

The Draft EIR also provides:

The Project would include **three levels** of **subterranean** vehicular parking, for a total of 133,163 SF. There would be a total of **364 parking stalls (218 standard spaces, 19 accessible spaces, 127 tandem spaces)**. The Project would also include **150 bicycle parking spaces** on the **first floor** of subterranean parking. Outdoor amenities would be located throughout the Project Site, including a fitness turf, wading pool, shade structure, and flexible lawn east of Clark Avenue, and an outdoor dining patio west of the Pacific Coast Highway. The exterior of the building would remain the same, with the addition of decorative window film and improvements to the ground level entryways; however, the majority of the adaptive reuse would involve tenant improvements to the interior of the building.

(DEIR, p. 5-1, *emph. added.*)

As evident from the above two quoted sections, the EIR's described 150 new parking spaces of Project are not *vehicle parking* spaces, but rather *bicycle* spaces. But the EIR fails to clarify this detail, thereby providing a misleading description of the Project against which the Alternatives are compared.

Based on the above-mentioned, it is reasonably foreseeable that parking stalls within the 3-level subterranean parking under some Alternatives that *exceed* the 364 parking stalls will include *even more* tandem spaces, which is not duly disclosed.

## 2. Market Rate Housing - Alternative 2

The Draft EIR's *second* Market Rate Housing Alternative is also inaccurately described. It offers **149 units**, comprised of **65 one-bedroom, 44 two-bedroom, 40 three-bedroom** apartments, resulting in approximately **273 bedrooms total**. Among other amenities, a dog park, outdoor BBQ with picnic tables, a flexible lawn with artificial turf, an outdoor patio, and an outdoor pool would be provided. It is unclear if the outdoor pool will be a shallow wading pool as with the Student housing or a deep pool.

Critically, the City mentions that AB 2097 parking requirement reductions will apply and the City would not enforce minimum parking requirements. This claim is inaccurate for several reasons. First, for the same reasons noted in Section IV.A, *supra*, AB 2097 does not apply to this Project. Second, the City has the authority and should enforce parking requirements and make specific adverse impact findings since Alternative 2 offers no affordable units at all.

Relying on AB 2097, Alternative 2 will provide only **273 parking** spaces for **273 units**. Such reliance, again, is misplaced and misleading to decisionmakers and the public.

## 3. Senior Living and Student Housing - Alternative 3

The Draft EIR's *third* Alternative is the Senior Living and Senior Housing – where the Draft EIR allocates the *first* floor for *administrative* offices and *amenities*, the *second-third* floors are provided for *senior housing* (50 one-bedroom units), and *third* to *seventh* floors will be *student housing* of 395 beds – 125 one-bedroom, 75 two-bedroom, and 40 three-bedroom units, resulting in a total of 243 dwelling units and 395 beds of student housing. This alternative provides one shared kitchen and lounge on *each floor* from the *third* to *seventh* floors, but no pool.

Here, too, the Draft EIR provides that AB 2097 applies, which is incorrect for reasons stated in Section IV.A, *supra*.

Improperly relying on AB 2097, Alternative 3 would provide a total of **445 parking** spaces to serve the senior living uses (50 spaces for 50 one-bedroom units and 395 spaces for student housing). (DEIR, p. ES-18.) As noted earlier, it follows that *either* all of the parking in excess of 344 will be *tandem* parking or a large part of the 445 parking spaces will be bicycle parking, rather than vehicle parking. The Draft EIR fails to provide those details on this Alternative, along with the feasibility of fitting 445 parking spaces in the 3 levels of subterranean parking where the Project plans to reduce parking by 34 spaces.

Also, as with other alternatives, the Draft EIR here fails to consider parking for employees of the student housing (commercial) portion.

#### 4. Student Housing and Office Space – Alternative 4

Alternative 4 would adaptively reuse the building and develop student housing and office space, with separate entrances and elevators for each. Outdoor amenities would include an outdoor dining patio, patio, and fitness turf wit equipment, but no outdoor pool.

The second to fifth floor would provide 240 dwelling units comprised of 125 one-bedroom, 75 two-bedroom, and 40 three-bedroom units, resulting in the 395 beds overall for student housing. The sixth-seventh floor would provide 34,300 sf. of office space, which – purportedly per SCAG’s employment summary report – would require 440 average sf per employee, resulting in approximately 77 office employees.

Alternative 4 – as all other Alternatives 1-3 – would maintain the existing three levels of subterranean parking.

The EIR also inaccurately provides that Alternative 4 would be subject AB 2097 parking requirements and thereby would provide 1 parking spot per student (395 spaces) and 77 spaces for the office component, i.e., **472 parking spaces** to serve both uses. (DEIR, p. ES-19.) For reasons mentioned for Alternative 3, *supra*, the Draft EIR fails to provide accurate information or feasibility of fitting 472 parking spaces in an enclosed 3-level subterranean parking or describe which portion of the noted 472 parking spaces will be vehicular.

In sum, the EIR fails to provide the *feasibility* of all Alternatives 2-4 and their parking allocation; it also fails to accurately inform on the number, configuration, and type of parking spaces that are possible to fit in an enclosed 3-level subterranean parking. This missing information is prejudicial and makes the EIR’s discussion of the range of

Alternatives legally inadequate, misleading, and unhelpful to make an informed decision.

**5. The EIR Fails to Include an Adequate Range of Alternatives, Including a Reduced Alternative to the Project.**

As our Supreme Court noted:

The process of selecting the alternatives to be included in the EIR begins with the establishment of project objectives by the lead agency. “A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings.... The statement of objectives should include the underlying purpose of the project.” (Cal.Code Regs., tit. 14, § 15124, subd. (b).)

(*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1163 [*“In re Bay-Delta”*].)

“Objectives chosen should be broad enough to permit a reasonable range of alternatives. (Cit. omit.)” (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 273–274.)

At the same time, an EIR should be found legally inadequate if it contains an overly narrow range of alternatives. (*Watsonville Pilots Ass’n v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087 (*“Watsonville”*) [not considering a reduced development alternative was error].) “The purpose of an EIR is not to identify alleged alternatives . . . so that these alleged alternatives may be readily eliminated.” *Id.* EIR’s failure to analyze a reduced alternative is a CEQA violation. (*Id.* at 1090.)

The Draft EIR here does not include a reduced alternative to the Project. Specifically, the Project proposes 149 student suites for 593 beds, and 364 parking stalls. (DEIR, p. 2-1 & 5-1.) A reduced alternative could be a different configuration of student suites to result in *less* number of beds. But there is no such Alternative provided.

Instead, as listed above, the fewer student housing and beds provided in Alternatives 3-4 necessarily *also* include either *senior housing* or *commercial office* space.

Notably, while the Draft EIR mentions a *Fewer Unit* alternative, it *rejects* that alternative as infeasible and thereby fails to analyze it either. (DEIR, p. 5-86.) But, as mentioned in *Watsonville*, alternatives are not to be listed in order to be rejected as infeasible. As discussed in Section IV.B.6, *infra*, the infeasibility argument in the Draft EIR is also legally flawed and unavailing.

As such, the EIR's alternatives' analysis is legally flawed as it fails to include *all* feasible alternatives, including the required *reduced density* alternative.

## 6. The EIR's Rejection of Two Alternatives as Infeasible Is Meritless.

The EIR's discussion of alternatives is also lacking and inadequate. As courts noted:

The discussion must 'focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, **even if** these alternatives would **impede** to some degree the **attainment** of the **project objectives**, or would be **more costly**.' (Guidelines, § 15126<sup>9</sup>, subd. (d)(3).)" (*Kings County Farm Bureau v. City of Hanford*, *supra*, 221 Cal.App.3d at p. 733, 270 Cal.Rptr. 650.)

This discussion of alternatives must be "meaningful" and must "contain analysis sufficient to allow informed decision making." (*Laurel Heights*, *supra*, 47 Cal.3d at pp. 403–404, 253 Cal.Rptr. 426, 764 P.2d 278.) The decision to require mitigation measures does not remove the need to consider project alternatives in the EIR. (*Id.* at pp. 401–402, 253 Cal.Rptr. 426, 764 P.2d 278.) Because the FEIR's discussion of alternatives is "lacking in any concrete information or analysis," it fails to meet this standard.

(*San Joaquin Raptor/ Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 735, *emph. added.*)

Also, CEQA does not require that Alternatives achieve *all* of the Project's objectives. Instead, it is sufficient that Alternatives achieve *most* of the Project's objectives – assuming, of course, those objectives are also neither too broad nor too narrow, as discussed above. (CEQA Guidelines § 15126.6(a)&(c).)

Here, the Draft EIR rejects two alternatives for allegedly *infeasibility* or *failure to meet* the Project's *housing* objective: (1) New Office Tenant Alternative; and (2) Fewer Unit Alternative. (DEIR, p. 5-86.) The Draft EIR's reasoning for finding those alternatives are infeasible is that those alternatives do not meet the City's housing goals. For example, for the rejected *New Tenant* Alternative, the Draft EIR provides:

Redeveloping the Project Site with new office tenants was **considered**. This **alternative** would **not** meet the Project **objectives**, specifically to adaptively reuse an existing underutilized office building with a **student residential building** that would help the City **meet** its **RHNA goal** and

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<sup>9</sup> Now, Guidelines § 15126.6.

**goals and policies outlined** in the City of Long Beach **General Plan**. New office tenants would not address the City’s **Housing Element goals** and **increase housing opportunities** that would address **unique housing needs** for **special needs residents** such as **students**. Improving the existing Project Site with new office tenants would not fulfill the city’s **housing goals** by expanding student housing opportunities in proximity to open space, public transportation, and a wide range of services and goods. Taking these factors into consideration, an office development **alternative** was **not** carried forward for **further analysis**.

(DEIR, p. 5-86, emph.. added.)

Similarly, for the *Fewer Unit* Alternative, the Draft EIR provides:

Redeveloping the Project Site with fewer residential units was considered. This alternative would **not** help to meet the Project’s objectives to the **same degree as** the Project. By providing **fewer units and beds**, the Project Site would become **underutilized** and would **not** allow the City to reach its **RHNA goals** at the same time **as** the Project **would**. Additionally, **fewer beds** would result in **less housing** in close proximity to open space, public transportation, and a wide range of services and goods in the City. Taking these factors into consideration, a **residential development alternative** was **not carried** forward for **further analysis**.

(DEIR, p. 5-86, emph. added.)

Notably, the Draft EIR fails to explain *how* a student dormitory meets the RHNA goals. And, for a reason. The RHNA is about *housing* – *not* transient dormitories. Specifically, nowhere in the Gov. Code § 65584, which regulates the housing element of the General Plan, does it mention about dormitories or student housing.

Also, that the proposed alternative would not meet the Project’s objectives “to the same degree as the Project” does not determine whether it is feasible or not. As the Draft EIR notes:

... CEQA requires that alternatives evaluated in an EIR be potentially feasible. CEQA **defines feasibility** as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors” (Pub. Res. Code Section 21061.1). Section 15126.6(f)(1) of the CEQA Guidelines identifies the factors to be considered when addressing the feasibility of alternatives, including **site suitability**, economic **viability**, availability of **infrastructure**, general plan **consistency**, other plans or

regulatory **limitations**, jurisdictional **boundaries**, and whether the proponent can reasonably acquire, control, or otherwise have access to an **alternative site**.

(DEIR, p. 5-85, *emph. added*.)

Notably, nowhere in the City’s definition or restatement of CEQA, does CEQA define feasibility as the ability to meet the Project objectives to the “same objectives” or to meet *all* of the Project objectives, as the EIR’s above-noted two examples of Alternatives note.

Instead, alternatives “shall include those that could feasibly accomplish *most* of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects.” (CEQA Guidelines § 15126.6(a)&(c), *emph. added*) “[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project....” (CEQA Guidelines § 15126.6(b).)

Also, as described by the Court in an analogous situation: Lastly, Appellants contend that all the County’s stated reasons fail to “demonstrate[ ] that the no project alternative is infeasible,” reasoning, it appears, that the County’s stated reasons are flawed because they are premised on the EIR’s unreasonably narrow project objectives. We agree, as mentioned, that the offered project objectives were unreasonably narrow. We also agree that this affected the County’s analysis of the no-project alternative and that the County, for this reason, will need to redo its analysis.

(*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 692-694, *esp.* 694.)

Public agencies must refrain from approving projects with significant environmental impacts if there are feasible alternatives that can substantially lessen or avoid those effects. (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 597.)

As the Draft EIR admitted, feasible for purposes of CEQA means “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” (PRC § 21061.1.)

With respect to *economic* factors, “[t]he fact that an alternative may be *more expensive* or *less profitable* is *not sufficient* to show that the alternative is financially infeasible. What is required is evidence that the *additional costs* or *lost profitability* are *sufficiently severe* as to render it *impractical* to proceed with the project.” (*Uphold Our Heritage, supra*, 147

Cal.App.4th at 599, *emph. added* (stating also that “the question is not whether [real party] can afford the alternative, but whether the marginal costs of the alternative as compared to the cost of the proposed project are so great that a reasonably prudent property owner would not proceed with the rehabilitation”).)

Lastly, the Draft EIR’s claims that the two alternatives – Fewer Unit and Other Tenants – will not meet the *housing* goals of the *General Plan* or *Housing Element* are unavailing. We have reviewed the site inventory of the City’s most recent housing element and were unable to find 5150 E. Pacific Coast Highway Site of the Project among sites listed as suitable for housing by the City. (**Exhibit L** [Printout of the City’s Site inventory of the Housing Element of the General Plan.]) Instead, the Project Site is designated as Community Commercial in the City’s Housing Element. (**Exhibit M** [Printout of the City’s Site inventory map showing the zoning designation of the Project site.]) Notably, the Project seeks General Plan amendments to even *allow* residential uses and also a CUP to allow *special group* uses of students; in other words, the Project is manifestly inconsistent with the General Plan rather than attempting to accomplish its goals.

In light of the above-noted settled law and legal principles, the City’s rejection of the Fewer Units Alternative or Other Tenant Alternatives as infeasible or for failure to provide *housing* and meet the RHNA goals and policies of the City and the City’s General Plan is legally and factually unsupported.

#### **7. The EIR Fails to List a *Preferred* Alternative.**

The EIR’s discussion of alternatives is also incomplete as it does not list a *preferred* alternative, while providing a number of inaccurately-described alternatives. While the EIR mentions the No Build/No Project Alternative 1 and also the Senior Housing and Student Housing Alternative 3 would be the environmentally superior alternatives (DEIR, pp. ES-19—20), it also lists a number of disadvantages leaving the public doubting which *one* of those *two* is the preferred alternative or whether any one of those is actually a preferred alternative at all. We also note that a *preferred* alternative is not the same as the environmentally superior one.

As in *Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 288-289 (“*Washoe Meadows*”), the EIR here with four alternatives presents a “moving target” (*id.*) typical of a scoping plan, which usually has to be prepared before the EIR is drafted.

In view of the above-noted, the EIR's range and discussion of alternatives are legally inadequate and missing critical information, and the EIR must be recirculated to provide a preferred alternative and an accurate range of alternatives, to allow the public's meaningful evaluation of their impacts and to enable a choice.

### **C. The Draft EIR Is Legally Flawed Since Its Baseline Assumptions Are Flawed and Inaccurate.**

“Without an adequate baseline description, analysis of impacts, mitigation measures and project alternatives becomes impossible.” (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 953.) “ ‘An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.’ ” (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320–321.)

The Draft EIR fails the above-noted informational disclosures of accurate baseline conditions. The Draft EIR fails to disclose the type and hence the intensity of the office uses at the Project Site. The Draft EIR's *one-page* baseline description briefly provides, in part:

#### **3.2 Project Site Setting**

**Figure 2-2: Local Vicinity and Surrounding Land Uses Map**, depicts the Project Site and immediate vicinity. The Project Site is located in the eastern part of the City. The Project Site is **generally bounded** by the Pacific Coast **Highway** to the north and east, East Anaheim **Street** to the south, and Clark **avenue** to the west. The Project Site is **surrounded by commercial, office, residential, and religious uses** to the north and east past the Pacific Coast Highway; a **recreational golf course** (Recreational Park Golf Course 18) to the **south**; and **commercial and residential** uses to the west.

#### **3.3 Cumulative Development**

Section 15355 of the CEQA Guidelines defines “cumulative impacts” as “**two or more** individual effects which, when considered together, are considerable or which compound or increase other environmental

impacts.” This means that while the impacts of projects on their own may be insignificant, when analyzed in combination with impacts from other projects in the vicinity, they may be significant. CEQA Guidelines section 15130 requires EIRs to discuss the cumulative impacts of a project “when the project’s incremental effect is cumulatively considerable.”

Each impact analysis discussion provided in **Chapter 4, Environmental Impact Analysis**, includes a cumulative impacts discussion; however, **no Projects** were **identified** within a **1-mile radius** of the Project as meeting the **City’s criteria of 5,000 SF** or greater of **new** commercial and/or industrial and greater than **10 new** dwelling units.

(DEIR, p. 3-1, *emph. added.*)

**First**, as shown above, the Draft EIR fails to identify the actual uses at the Project Site. And yet, the Project will displace those uses and *move* those to a different location. Elsewhere, the Draft EIR provides: “The existing office building is approximately 120,000 sf of which 109,600 sf is currently leased (as of January 2024).” (DEIR, p. 4.3-8.) Also, the Draft EIR fails to identify the types of such uses at the Project site for their intensity purposes; for example, as noted in the City’s own communications and in our research (**Exhibits H-K**), how much of the building is leased and the types of uses at the Project site are important to make an accurate baseline for CEQA.

**Second**, the Draft EIR provides a very brief and generalized summary of surrounding uses of the Project. Based on the map of the Housing Element Site Inventory, the Project is surrounded by residential R-2, R-4 uses, as shown in the screenshot below:



Moreover, the Housing Element Site Inventory shows that 5155 E. Pacific Coast Highway Site – just across from the Project site – is marked as suitable for residential development of 79 market-rate units (**Exhibit L**, p. 3), even though per google map images of that site as of the date of this comment letter, that site is not yet developed into a residential use (displays the sign of a Masonic facility), as shown below:



As such, the Draft EIR fails to present an accurate and precise description of land uses around the Project and therefore also taints the impact analysis in the EIR, since the Project’s impacts are measured against the existing environmental baseline and land uses, including the density and intensity of the adjacent and proximate land uses.

**Third**, the Draft EIR’s **cumulative impacts** analysis is flawed. It claims:

Each impact analysis discussion provided in Chapter 4, Environmental Impact Analysis, includes a cumulative impacts discussion; however, no Projects were identified within a 1-mile radius of the Project as meeting the **City’s criteria** of 5,000 SF or greater of **new** commercial and/or industrial and greater than 10 new dwelling units.

(DEIR, p. 3-1, *emph. added.*)

The claim is factually and legally inaccurate, as it focuses only on *new* uses. Yet, under CEQA, the projects that are deemed related and must be considered for cumulative impact analysis are not only *new* ones, but rather “past, present, and probable future projects.” Specifically, CEQA Guidelines § 15130(b) provides:

(b) The discussion of cumulative impacts **shall reflect** the **severity** of the impacts and **their likelihood of occurrence**, but the discussion need not provide as great detail as is provided for the effects attributable to the

project alone. The discussion should be guided by the standards of practicality and reasonableness, and should focus on the **cumulative impact** to which the **identified other projects contribute** rather than the attributes of other projects which do not contribute to the cumulative impact. The following elements are **necessary** to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of **past, present, and probable future projects** producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, **or**

(B) A **summary of projections** contained in an adopted **local, regional or statewide plan**, or related **planning document**, that describes or evaluates conditions contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A **summary of projections** may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Any **such document** shall be **referenced and made available** to the **public** at a **location specified** by the lead agency.

(Emph. added.)

The Draft EIR's cumulative impacts discussion manifestly fails to comply with either the option A or B under CEQA Guidelines § 15130(b)(1). It focuses only on the *new* projects for purposes of subsection A, and it fails to name any regional or local plan, much less reference any source of such projections of potential growth and uses for purposes of subsection B. Notably, as mentioned above, even though the Housing Element of the City's General Plan identifies the Project's immediately adjacent (across) 5155 E. Pacific Coast Highway address in the housing site inventory as a suitable site for housing development – thereby making it a *probable future* project – the Draft EIR claims that there are *no new* projects within 1 mile radius of the Project.

For all the reasons noted above, the EIR's baseline assumptions are inaccurate, which, in turn both make the EIR legally inadequate and also taint the rest of the impact analysis in the EIR, as further detailed below.

**D. The Draft EIR's Impact and Mitigation Analysis and Findings Are Legally Inadequate and Unsupported by Substantial Evidence.**

For reasons mentioned in Section IV.A-C, the Draft EIR's impact analysis is flawed *ab initio*, since the EIR fails to provide an accurate project description and an accurate baseline, and since it improperly relies on AB 2097 and incorrectly presumes it applies.

In addition, the Draft EIR's impact analysis is flawed as it improperly concludes that certain impacts are less than significant by relying on unsupported baseline assumptions. The Draft EIR noted the following impacts and areas:

**No Impacts:** aesthetics; agriculture and forestry; mineral resources; wildfire.

**Less than significant impact:** air quality; biological resources; energy; greenhouse gas emissions (“GHG”); hazards and hazardous materials; hydrology and water quality; land use and planning; population and housing; public services; recreation; transportation; utilities and service systems.

**Less than significant with mitigation:** cultural resources; geology and soils; noise; tribal cultural resources.

(DEIR, p. ES-23<sup>10</sup>-25)

As evident from the above-noted, the City qualified the most critical impacts of air quality, GHG, land use, biological resources, hazards, water, population and housing, transportation, utilities, public services as “less than significant.” And by qualifying so, the City failed to duly analyze those impacts or provide mitigation for those.

Similarly and critically for these days, the Draft EIR classified the *wildfire* as “no impact,” claiming:

The Project site is not located in or near an SRA and does not contain lands classified as VHFHSZs. During both construction and operation, Alternative [ ]/Project would be required to maintain adequate emergency access for emergency vehicles as required by the City of Long Beach and the Long Beach Fire Department. Therefore, no impact would occur.

(DEIR, p. ES-27-28.)

However, the devastating wildfires started in Los Angeles since January 7, 2025 and covering various areas, including Pasadena, Altadena, Pacific Palisade, Glendale, Simi

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<sup>10</sup> We noted that the EIR's ES-22 page is missing.

Valley, and others, show that wildfires may develop everywhere – not just in the SRA areas or lands classified as VHFHSZ (**Exhibit N** [Information on LA Wildfires and their effect on Residents of Long Beach].)

Long Beach is not any more protected from wildfires than Los Angeles. Therefore, potential impacts of wildfires and availability of evacuation routes and possibilities are all critical concerns for the Project. These concerns are even more pronounced where, as here, the Project proposes to bring 593 beds for students and potentially 593 cars to the area, apart from employees and service personnel at the dorm.

As detailed below, the Draft EIR’s conclusions about “less than significant impacts” are legally and factually unsupported.

### 1. Air Quality Impacts

The Draft EIR’s air quality analysis is flawed as it is based on a methodology that improperly understates the Project’s impacts. As the Draft EIR describes, sources of operational air quality impacts include *transportation* and *energy*:

Operation of the Project results in emissions from **area sources** (e.g., landscaping, maintenance equipment.), **mobile sources** (e.g., automobiles and trucks), and **energy sources** (e.g., natural gas usage). **Area source** emissions would be produced through **evaporation** of **solvents** in surface coatings such as primers, paints, and varnishes. In addition, **area source** emissions would include emissions from use of **landscaping** equipment and consumer products such as **detergents**, **cleaning compounds**, **personal care** products, and lawn and garden products. These emissions were calculated using defaults provided in CalEEMod.

**Energy source** emissions would include emissions produced through the use of **natural gas** CalEEMod defaults were used to estimate the natural gas usage for the Project.

**Mobile source** emissions were primarily derived from **vehicle trips** generated by the Project, including employee trips to and from the site and truck. Trip generation rates and vehicle fleet mix used in the analysis are further discussed in **Section 4.18**, Transportation. Emissions estimates for on-road travel was calculated using CalEEMod.

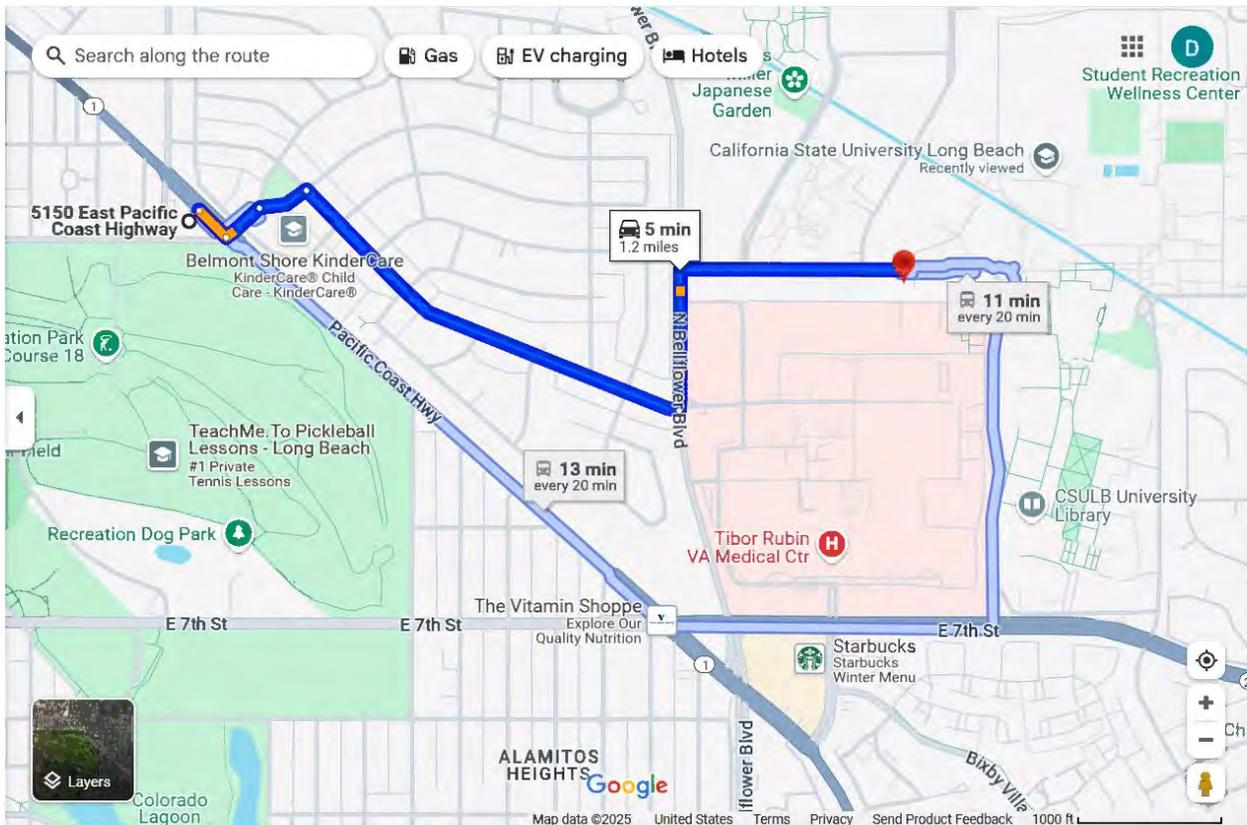
(DEIR, p. ES-4.2-11—12, *emph. added*.)

And, for operational impacts from vehicles, the EIR provides:

For construction, CalEEMod calculates emissions from off-road equipment usage and on-road vehicle travel associated with haul, delivery, and construction worker trips. Per the Trip Generation and Vehicle Miles Screening Report prepared by Kimley-Horn for the Project, the Project is anticipated to generate approximately **507 daily vehicle trips**.

(DEIR, p. 4.2-11, emph. added.)

It is questionable, however, how a Project proposing 593 beds for students of the Long Beach University located more than 1 mile away will nonetheless generate only 507 daily vehicle trips. As the screenshot below shows, the proposed Project is about 5 minutes drive away from the University:



It is reasonably foreseeable that all 593 students may have their own cars and may generate over 1000 vehicle trips per day – to and from the University. Moreover, it is reasonably foreseeable that the students may generate *other and additional* daily trips as they may use their cars for *other chores*, since there is no showing that the 5150 E. Pacific Coast Highway site is next to stores. As such, the EIR’s estimate of 507 daily trips is clearly erroneous and understated, and hence the EIR’s operational air quality impacts analysis which relies on that low-estimate 507 daily vehicle trips is clearly

erroneous as well. While the Draft EIR elsewhere explains that the 507 daily vehicle trips are based on *crediting* the daily trips from the *existing office uses*, this crediting is unsupported and erroneous for many reasons, including the *intensity* of the office uses (day, hours) compared with student housing, and the fact that the existing uses will not be extinguished but will merely relocate elsewhere and continue to *add* to vehicle miles. Moreover, the Project must also count the air quality and trip volumes of the existing uses at the Project site since those will not be extinguished either but rather move to a different area. Those additional trips include trips generated by various offices of the allegedly mostly leased Project Site, including the vehicle trips of the alleged medical office located at the Project site. Instead, the Draft EIR not only failed to consider the additional trips of the existing offices that will move elsewhere but also improperly *credited* the trips from such uses from the Project’s vehicular trip estimates to arrive at 507 vehicle trips for the Project, as shown in Table 4.12-2 below:

**Table 4.12-2: Project Trip Generation**

Land Use	Size	Unit	ADT <sup>1</sup>	AM Peak Hour			PM Peak Hour		
				In	Out	Total	In	Out	Total
<b>Proposed Land Use</b>									
Off-Campus Student Apartment (Mid-Rise) (Modified Rates for Over ½ Mile from Campus)	593	bedrooms	1,695	25	30	55	76	85	161
<b>Existing Land Use</b>									
General Office Building	109.6	ksf	-1,188	-147	-20	-167	-27	-131	-158
<b>Net Project Trips</b>			<b>507</b>	<b>-122</b>	<b>10</b>	<b>-112</b>	<b>49</b>	<b>-46</b>	<b>3</b>
ksf = thousand square feet Source: Kimley-Horn and Associates, TGA VMT Memorandum, 2024.									

(DEIR, p. 4.12-2.)

The EIR’s crediting of 1,188 trips from the existing land uses, and thereby crediting of their generated air quality emissions was error.

That crediting of the existing but not extinguished uses was error is confirmed by the OPR’s guidance and expert report on an analogous project moving the existing uses to a different area. (**Exhibit O**, pp. 2-7 [SWAPE Report on the GUSD project].)

As a result of these omissions and erroneous calculation of vehicle trips and crediting of existing trips, the Draft EIR also failed to consider the *health impacts* from the air

pollution and provide for mitigation. (**Exhibit O**, pp. 7-13 [need for updated health risk assessment] and pp. 13-18 [proposed mitigation measures for air quality].)

In addition, the EIR fails to consider the impacts of the massive increase of *energy* impacts and hence *air quality* pollution: increase in the use of natural gas. Specifically, while the existing *office* uses at the Project site may be using gas or may have gas service connections, it is reasonably foreseeable that the proposed 593-bed project, which will include kitchens, bathrooms, and other appliances, will need more use of natural gas. Notably, the City's documentations confirm this by noting that the Project will need to *upsized* the gas pipes and replace the existing ones:

- Long Beach Energy Resources currently maintains an **active gas service** line feeding the existing building on the lot that will need to be **upsized/renewed** if loads increase due to the conversion. See GIS map (attached) for approximate location of the service.
- If additional new gas service or renewal of existing service is needed for the proposed conversion, Long Beach Energy Resources will need to review and approve the location for the meter and buried service line to be installed. Please consider that the routing of the buried gas service line and clearance requirements for meter may impact the design of the development.

(**Exhibit D**, p. 2, *emph. added.*)

And yet, the Draft EIR fails to provide an accurate information about the Project's operational impacts from natural gas uses, claiming:

“Regarding natural gas, construction activities **typically do not** require natural gas. Additionally, the Project's projected **natural gas** demand during Project operations would represent a **negligible** increase compared to the **County's overall natural gas** consumption increase.”

(DEIR, p. 4.14-11, *emph. added.*)

There is no support for the City's statement that the construction of the Project will not require use of natural gas. To wit, some construction equipment and processes do use natural gas. (**Exhibit P**, p. 11 [LSI engines use gasoline, propane, and compressed natural gas as fuel. The LSI Fleet Regulation includes some electric-powered equipment.]) The Project – despite its adaptive reuse – still plans and proposes construction work, including to put a wading pool for students, build other amenities, make street improvements and underground utilities extending beyond the Project site.

More critically, there is no support for the Draft EIR's comparison of the Project's natural gas uses with the *County's* [not even City's] natural gas consumption increase and, based on that comparison alone, to conclude that the Project will have only a "negligible increase" and therefore no significant impacts. The Draft EIR's understatement of the Project's natural gas impacts and hence the associated air quality impacts further make the EIR's air quality analysis legally and factually flawed and unsupported.

For all of the above-noted reasons, the EIR's analysis of air quality impacts from various sources is flawed, making the EIR legally inadequate and improperly leading to a Project with significant impacts, including on public health, that are left unmitigated.

## 2. Impacts on Biological Resources and Public Services

The EIR fails to even list biological resources as a separate study area for the EIR. (DEIR, p. 4.1-1.) The Draft EIR mentions that its initial study analyzed the biological impacts of the Project and found "no impacts." (Draft EIR, p. 5-8.) The Draft EIR's analysis of biological resources is nothing but conclusory:

As discussed in the Initial Study, included in **Appendix A** of this Draft EIR the Project would have a less than significant impact to biological resources, including adverse effects on any special status species, riparian habitat or other sensitive natural community, federally protected wetlands, native resident or migratory fish and wildlife species, and would not conflict with any local policies or ordinances protecting biological resources. Therefore, impacts to biological resources be less than significant.

Alternative 1 would involve no construction nor operations on the Project Site that would impact biological resources. Therefore, there would be no impacts to biological resources, and impacts would be less under Alternative 1 than the Project.

(DEIR, p. 5-8.)

In the meantime, Appendix A to the Draft EIR notes:

"Adjacent to the existing building, the **existing surface parking, walkways, and landscaping** would be **removed** and would be **replaced** by **new outdoor amenities**. A security fence and gate would be provided around the perimeter of the Project Site. Project design would also include lighting of entryways, publicly accessible areas, parking areas, and common building and open space residential areas for security purposes."

(DEIR, Appendix A, p. 13/pdf p. 26, emph. added.)

Also, Draft EIR, Appendix A, Section 4.4 provides:

*4.4e Would the Project conflict with local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?*

**Less Than Significant Impact.** The proposed Project Site is located in an urbanized area and is highly disturbed with minimal vegetation. The proposed Project would not affect any protected biological resources. The existing tree located on Clark Avenue would be preserved. There are currently **four street trees** located on the **periphery** of the proposed Project Site along Pacific Coast Highway. **These trees would not be removed** as part of the proposed Project. The City does **not** have a **tree preservation** policy or ordinance; however, LBMC Chapter 14.28, Trees and Shrubs, regulates and controls the planting, maintenance, and removal of trees on City streets.

(DEIR, Appendix A, pp. 31-32/pdf pp. 44-45, emph. added.)

In addition, the EIR admits that there *are* trees on the Project site, and it appears to concede that those trees *will* be removed and also that those trees may provide habitat for nesting birds. But the Draft EIR fails to provide any more information or mitigation other than require a nesting bird survey 14 days prior to commencement of the Project and then suggesting that construction activities should not occur during the general avian breeding season “to the extent feasible”:

The Project **Site contains** ornamental landscaping, **trees along Clark Avenue and Pacific Coast Highway**, and a sparsely landscaped open space area. It is unlikely that the ornamental landscaping on-site would provide suitable habitat for any native resident or wildlife species. However, the **existing trees may provide habitat for nesting birds**. Most bird nests and eggs are protected under the California Fish and Game Code (CFG) Section 3503 and the Migratory Bird Treaty Act (MBTA). **Project construction activities and tree maintenance activities should occur** outside of the general **avian breeding** season of **February 1st to through August 31st** to the **extent feasible**. **If** Project-related construction, demolition, and tree maintenance activities **cannot** occur outside of the general avian breeding season (February 1st to through August 31st), a **pre-activity nesting bird survey** shall be conducted **prior** to the onset of the aforementioned activities, within a maximum of **14 days** prior to commencement.

(DEIR, Appendix A, p. 31/pdf p. 44, emph. added.)

Critically, since the EIR fails to consider biological impacts, the noted mitigation and recommendation for a survey is not even in the mitigation plan and hence is not binding either.

As such, the City's Draft EIR or its Appendix A to which the EIR refers for biological resources provides no definitive answer as to how many trees will be removed as a result of the Project, while at the same time admitting that trees will be removed and providing no enforceable protection for nesting birds for which such trees serve as a habitat.

In sum, the EIR's findings that no biological impacts will result are unsupported and its biological impact analysis is legally inadequate as it *omits* information.

Also, similar to biological impacts, the Draft EIR fails to consider the Project's impacts to *public services* and instead references its analysis of public service impacts in the Appendix A to the EIR, i.e., the initial study, stating:

As discussed in **Section 4.15, Public Services**, of the Initial Study included in **Appendix A** of this Draft EIR, the Project would have a less than significant impact in regard to Public Services.

Impacts to fire protection services, police protection services, schools, parks, and other public facilities would be less than significant.

(DEIR, p. 5-80.)

And Section 4.15 in the Appendix A is not any more informative. It provides:

Impact Analysis

*4.15a Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physical altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for fire protection?*

Less Than Significant Impact. The City of Long Beach Fire Department (LBFD) operates 23 fire stations throughout the City. Three fire stations are located within 1 mile of the Project Site: LBFD Station 4 at 411 Loma Avenue LBFD Station 14 at 5200 East Elliot Street, and LBFD Station 17 at 2247 Argonne Avenue, located approximately 1.2 miles southwest, 0.95-mile south, and 1.2 miles southwest of the Project Site, respectively.

The LBFD responded to approximately 80,000 calls in 2022. In February 2022, the latest month for which data was available, the LBFD made 4,981 calls; however, 4,180 (84 percent) of those calls were for medical service, and 587 (12 percent) of calls made for fire protection. In fiscal year **2022**,

the LBFD arrived on scene **within six minutes** for approximately 33.8 percent of emergency calls.

The proposed Project would adaptively reuse an existing seven-story office building and introduce housing for students which **could incrementally increase demand** for fire **protection services**. Therefore, there is **potential** for an **increase in service calls** to the **LBFD** due to an **increase in student residents** on the Project Site. **However**, according to **LBMC Section 18.16.050**, Fire Facilities Impact Fee, all residential and nonresidential developments would be required to **pay a Fire Facilities Impact Fee** to support a potential for an increase in need for fire protection services. Impacts associated with **fire protection services** would be **less than significant**. **This issue** will **not** be carried forward for further analysis in the EIR.

(DEIR, Appendix A, pp. 53-54/pdf pp. 66-67, emph. added.)

The Initial Study relies on the payment of impact fees for the Project's potential impacts on other public services, including schools, police, and other governmental facilities. (DEIR, Appendix A, pp. 54-55.)

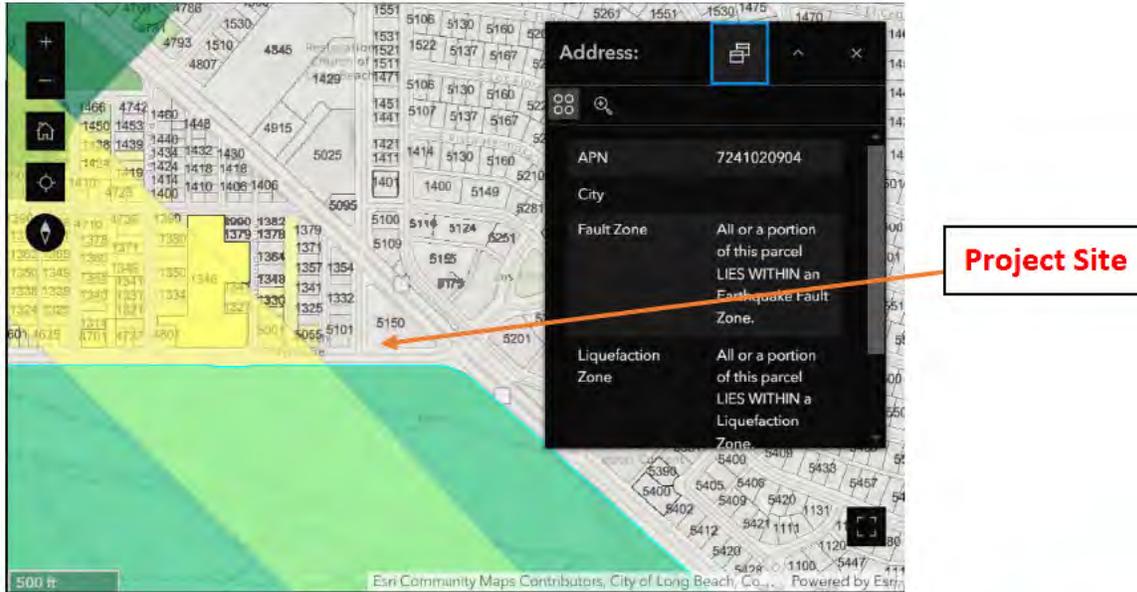
However, the City's reliance on solely impact fees to conclude the Project will have less than significant impacts – while also adding 593 student residents to the area for a University about one mile away – is wholly unsupported by facts and legally misplaced. Critically, impact fees, without more, cannot be sufficient to conclude the Project will have less than significant impacts. Payment of fair share impact fees by a Developer are not proper mitigation measures for the City unless those “mitigation measures require the City to undertake an *action*”; i.e., to “prepare” the fair share plans and unless the City provides that those are feasible and not speculative, i.e., provide an estimate of the cost to prepare the fair share plans, if any, and the estimate of how much the mitigation measures themselves in those plans will cost or how they will be implemented. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 197.)

In sum, the EIR's analysis of biological and public services impacts is legally inadequate and missing critical good faith disclosures, information, and much needed mitigation for the changes the Project proposes, including 593 students added to the site, and physical changes to the surrounding environment, which will be affected.

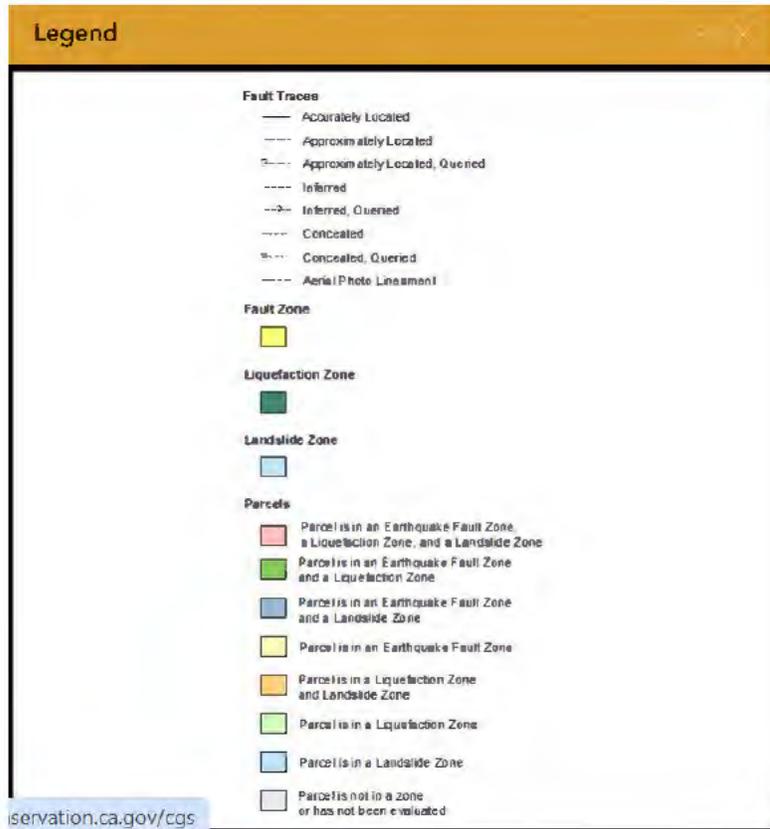
### 3. Geology Impacts

While the Project Site itself is not within the earthquake or liquefaction zone, the Alquist-Priolo Map shows that it is *immediately across* from the Project Site is located

within the earthquake and liquefaction zone, as shown in the screenshot below, marked in green and yellow:



The legend of the Earthquake Map below shows that the yellow stands for the earthquake fault, while the green color stands for liquefaction:



Nonetheless, the Draft EIR provides a very brief Geology/Soils impact analysis (DEIR, pp. 4.5-1—4.5-5), disclaiming any impacts and failing to mention about the Project's close proximity to the earthquake fault and liquefaction zone. It states:

As determined by the Initial Study, the Project would have **no impact** in regard to the **rapture of a known earthquake line, ground failure and liquefaction, landslides, lateral spreading, subsidence, liquefaction or collapse, expansive soils, and soils incapable of supporting the use of septic tanks or alternative wastewater disposal systems.** Furthermore, the Project would not **directly or indirectly cause** potential substantial **adverse effects**, including the **risk of loss, injury, or death** involving **strong seismic ground shaking** or result in substantial **soil erosion** or the **loss of topsoil**. As such, impacts with respect to **seismic ground shaking and soil erosion** or the loss of topsoil would be **less than significant**, and **no further** analysis is required.

(DEIR, p. 4.5-4, *emph. added.*)

As such, the Draft EIR completely fails to acknowledge the potential that bringing a high-density and high-intensity Project with 593 beds/students, employees, and potentially 593 or more cars, of which only a fraction will be accommodated in the subterranean parking and about 127 of which parking will be *tandem* parking, may cause geological or soil impacts. In other words, the Project proposes to bring many people into the area without providing adequate and safe parking and also creating potential gridlocks in case of earthquake, landslides, impeding evacuation possibilities for those students and others residing or working nearby, and endangering the surrounding environment as a result.

The Project's potential geological impacts and hazards are even more pronounced in light of the Project's potential non-suitability for residential uses. Specifically, the Project is a 7-story landmark building made of glass/mirror, as shown below:



(See also, **Exhibit R** [Printout of the Project’s image and advertised office space].)

And, as the City and Fire Department noted, it is questionable whether the Project – and its 7 stories of a glass building – is code-compliant for the proposed residential uses:

2

High Rise / Low Rise building determination:

S111/ LB Fire

- City permit records reviewed; original project Certificate of Occupancy was not found. Proposed next step from City of LB is to provide an analysis of 1976 UBC vs. current building code to determine high-rise building requirements then vs. today. Existing conditions may be grand-fathered into current project depending upon the conclusion from this analysis and further research. S111 to provide copies of original drawings with 1976 UBC analysis.
- Bret A. – LB Fire to check City’s annual inspection list of high-rise buildings to determine if the existing building has been considered a high-rise.

(**Exhibit E**, p. 1.)

Notably, based on the Alquist-Priolo map screenshot above, the Project is within several feet of both the earthquake fault and liquefaction areas. As such, the Project and its accommodation of 593 students, employees in a glass building, as well as providing parking for about half of those students and in tandem (back-to-back) parking within an enclosed 3 *subterranean* levels may exacerbate the safety risks of earthquake and liquefaction next to the Project site.

These risks to people's life and safety are further exacerbated by the fact that, as noted below, the Project is located in the methane zone, which is prone to cause fires and further may destabilize the Project site and soils.

The Draft EIR's failure to discuss the above-noted hazards and geologic risks makes the EIR legally inadequate.

#### 4. GHG Impacts

The Draft EIR concludes that the Project will have less than significant GHG Impacts. The Draft EIR's GHG impact analysis is flawed for several reasons.

**First**, the Draft EIR concedes the **long-term impacts** of GHG:

GHGs are global pollutants, unlike criteria air pollutants and toxic air contaminants (TACs), which are pollutants of regional and local concern. Whereas pollutants with localized air quality effects have relatively short atmospheric lifetimes (about one day), GHGs have **long atmospheric lifetimes** (one to several thousand years). GHGs persist in the atmosphere for long enough time periods to be dispersed around the globe.

(DEIR, p. 4.6-11, *emph. added.*)

For construction impacts, the EIR presumed 6-8 hours work for a year from January 2025 through March of 2026:

Construction equipment employed would include excavators, tractors, graders, cranes, forklifts, loaders, backhoes, welders, paving equipment, cement and mortar mixers, and air compressors. Each piece of equipment was assumed to operate between six to eight hours a day during the applicable phase of construction. For purposes of the analysis, construction of the Project is expected to commence in January 2025 and would end in March 2026.

(DEIR, p. 4.6-13.)

However, the assumptions for building the Project are not warranted because – as of January 2025 – the Project's EIR is still being reviewed.

Moreover, the City's records show that the Project will include undergrounding and upsizing utilities, including gas, for which additional construction activity will have to occur:

Developer proposes improvements that may impact existing under- and above-ground utilities through and adjacent to the project site, such as gas lines, street light conduits and utility poles and overhead lines, and along the perimeter streets adjacent to the project site. The Developer shall be responsible for all design, applicable utility approval, permitting, relocation work, easements relocation and commissioning as required by the interested agency and shall work with each utility directly.

(Exhibit S, p. 6.)

There is no evidence that the additional construction for purposes of utilities, including outside of the Project site, has been assessed for GHG impacts.

As for *operation* impacts, the Draft EIR's impact analysis was based on the incorrect and legally erroneous assumptions regarding the Project's GHG-related traffic and energy impacts. Specifically, the Draft EIR notes:

Operation of the Project results in emissions from **area sources** (e.g., **landscaping**, **maintenance equipment**, and **consumer products**), **mobile sources** (e.g., automobiles and trucks), **energy sources** (e.g. electricity and natural gas), **water** and **wastewater** conveyance, and **fugitive refrigerants** from **air conditioning** and **refrigerators**.

**Energy source** emissions would include emissions produced through generation of **electricity** and the **use** of **natural gas**. The Project would be **subject** to **compliance** with the energy conservation measures mandated by **Title 24 of the California Building Standards** and California's 2022 Building Energy Efficiency standard. CalEEMod assumed compliance with the 2019 Title 24 standards by default, which is conservative as the 2022 Title 24 standards are currently applicable.

**Mobile source emissions** were primarily derived from **vehicle trips generated** by the Project, including **residence** and **employee trips** to and from the site and **occasional truck trips** for delivery or pick-up. Trip generation rates used in the analysis were derived from the 5150 Pacific Coast Highway Development, City of Long Beach Trip Generation Analysis and Vehicle Miles Traveled Screening (**Transportation Analysis**), included as Appendix H. Based on the Project's Transportation Analysis, the Project would result in a **net total** of **507 additional** daily trips.

(DEIR, p. 4.6-14, *emph. added.*)

**First**, it is reasonably foreseeable that the Project will significantly add to the energy, natural gas, water/wastewater uses by bringing 593 people on the Project Site, along with commercial kitchens, refrigeration in each one of 149 rooms and the amenity, kitchen, pool, and other areas. The EIR, however, appears to rely solely on the Project's compliance with Title 24 of the California Building Standards to claim that the energy impacts will be low. (*Ibid.*) However, as courts noted, compliance with the building or any other code is not an adequate assessment of mitigation where the code does not address CEQA considerations, including "whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate certain resources, or anything else external to the building's envelope." (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 211.) There is no evidence that the Title 24 building code was designed to lessen GHG impacts or that it will necessarily reduce GHG impacts to insignificant levels.

**Second**, the Draft EIR's GHG impact analysis ignores the principle of *additionality*. The Project brings *additional* impacts that have not been considered by any plan, since the Project site is not even zoned for residential or high-density uses – it was simply an office building for years. This principle of *additionality* – i.e., requirement that the reduction of GHG impacts must be *in addition* to the reduction otherwise required by law or existing regulations - is found in the Health and Safety Code and recently emphasized by the court. (Health & Safety Code section 38562(d)(2) ["the reduction is in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur"]; *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 514-515. ["Additionality is an important requirement because if non-additional (i.e., 'business-as-usual') projects are eligible for carbon [offset] ... then the net amount of greenhouse gas emissions will continue to increase and the environmental integrity of carbon reduction projects will be called into question." *Id.* at 514].)

**Third**, the Draft EIR's GHG impact analysis is flawed, as it relies on the understated transportation impact analysis which erroneously concludes that the Project will have only 507 vehicle trips per day. As also noted earlier in the air-quality Section IV.D.1 section above, the EIR's conclusion of 507 vehicle trips per day is based on the erroneous crediting of over 1,100 trips of the *allegedly* present existing uses on the Project site. However, there is no evidence in the EIR that the present land uses (office

use) produce about 1,100 vehicle trips currently. The EIR does not even account for the *types* of such present uses, as noted earlier.

**Fourth**, a major flaw in the Draft EIR’s GHG impact analysis is that it *credits* the GHG impacts of present uses and discounts those – including for natural gas use, energy use, water use, and, most importantly, vehicle trips – from the proposed uses. Such crediting, however, is legally erroneous since the existing uses *will not* be extinguished by the Project but rather move to a different location. As noted by expert SWAPE in an analogous project review:

However, **relying** on the proposed Project’s **net GHG** emissions, rather than the Project’s total GHG emissions, is **incorrect** and **inconsistent** with recent guidance set forth by the **Office of Planning and Research (OPR)**. In the Final Statement of Reasons for the GHG-specific Guidelines,\***55**<sup>11</sup> OPR concluded that lead agencies cannot simply consider whether a project increases or decreases GHG emissions at the project site, but must consider the effect that the project will have on the larger environment.

Accordingly, **if** a lead agency wants to use a **net approach** by subtracting existing on-site emissions from the project emissions, it **must support** that decision with substantial evidence **showing** that those **existing emissions** sources **will be extinguished** and **not simply displaced**.\***56**<sup>12</sup> Review of the Project’s GHG analysis, however, demonstrates that the GHG emissions generated from the 32,233 square foot general office building that will be demolished were subtracted from the proposed Project’s GHG emissions, without substantial evidence showing that all of these existing GHG emissions sources on the Project site would be extinguished by the proposed Project, and not simply move elsewhere leading to increased total cumulative GHG emissions over the applicable GHG thresholds. As a result, the Project’s GHG impact is underestimated and inadequately addressed.

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<sup>11</sup> Footnote 55 referenced in SWAPE’s comment provides and refers to the source: “Final Statement of Reasons, pp. 83-84, *available at*, [http://resources.ca.gov/ceqa/docs/Final\\_Statement\\_of\\_Reasons.pdf](http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf)”

<sup>12</sup> Footnote 56 referenced in SWAPE’s comment provides: “See CEQA Guidelines, § 15064.4, subd. (a) (“The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort, based on available information, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.”)”

(**Exhibit O**, p. 21, *emph. added.*)

It is, therefore, manifest that the Draft EIR's crediting of existing office uses towards the Project's GHG impacts is in error. The Draft EIR provides no showing that the existing uses will be extinguished and not simply displaced.

**Fifth**, the Project's GHG impact conclusions of less than significant impacts are also flawed since it relies on its alleged compliance with Title 24 code and installation of solar system and EV chargers. The Draft EIR provides:

Project operations would benefit from the implementation of current and potential future energy regulations including the SB 100 renewable electricity portfolio target of 60 percent renewable energy by 2030. SB 100 also established a further goal to have an electric grid that is entirely powered by clean energy by 2045. It should be noted that the Project would comply with the **2022 Title 24 Part 6 Building Energy Efficiency Standards (2022 Energy Code)**. Among other updates, the **2022 Energy Code** includes updated standards including **new electric heat pump** requirements for **offices** and banks; and the **expansion of solar PV** and battery storage standards to additional land uses including offices. Projects whose permit applications are applied for on or after January 1, 2023, must comply with the 2022 Energy Code. Title 24 is part of the State's plans and regulations for **reducing emissions of GHGs** to meet and exceed AB 32 and SB 32 **energy reduction** goals. Therefore, the Project would have a less than significant impact on GHG emissions.

(DEIR, p. 4.6-18—4.6-19, *emph. added.*)

However, the Project fails to provide any specifics as to *how* it will provide for solar roof for a Project that proposes simply an *adaptive* reuse of the *existing glass* building and has no such existing roof accommodations. The feasibility of solar panels on a glass building is also questionable and there is no respective analysis in the Draft EIR.

Similarly, as to EV-chargers, the Draft EIR claims:

The Project would also include a number of EV parking spaces. Particularly, **10 percent** of the **total number of parking spaces** would be EV charging spaces **capable** of supporting future Level 2 EV supply equipment (EVSE), **25 percent** of the total number of parking spaces would be **EV ready**, and **5 percent** of the total number of parking spaces would be equipped with **EVCS**.

(DEIR, p. 4.9-8, *emph. added.*)

However, this 10% of total number of parking spaces is notably based on the Draft EIR's *reduced parking* and its presumption that such reduced parking is proper and allowed here under AB 2097. For reasons stated earlier, the Project is not eligible for AB 2097 since, among other things, the Project is not for a residential use but rather transient (dorm) use, the Project provides no affordable units, and the Project is not even located within ½ mile of a qualifying major traffic stop.

For all of these reasons, the Draft EIR's GHG impact analysis is flawed. The Project does not *reduce* GHG impacts as required by state policies and plans. Instead, it significantly adds to the GHG impacts and erroneously relies on *net* GHG impacts.

## 5. Hazards and Hazardous Materials Impacts.

The Draft EIR concludes that the Project's hazards and hazardous materials impacts will be less than significant despite the fact that there are admittedly potential recognized environmental conditions (“**REC**”) on the Project site and solely based on the fact that the Project Site has been redeveloped into an office building. The Draft EIR provides, in pertinent parts:

### Historical and Present Uses on the Project Site

The Project Site is currently developed with an approximately 120,000 sf office building with three subterranean parking levels, surface parking lot, and associated landscaping. Stationary equipment at the Project Site includes **three cable-traction elevators, a 15,000-gallon underground water storage tank, hot water heaters, compressors, a cooling tower, dry-type transformers, a fire pump, and a sump.** Carbon monoxide monitors are located throughout the subterranean parking levels.

The Project Site reconnaissance consisted as part of the Phase I ESA included an inspection of the Project Site and a perimeter survey of the surrounding properties in compliance with American Society for Testing and Materials (ASTM) standards. The **survey identified potential sources of environmental concern** including a **cooling water treatment container, electrical equipment containing PCBs, self-luminescent tritium exit signs, the sump, and the underground water storage tank.** However, these items were found to **appear in working order** with no signs of **staining or leaking or hazardous substances,** and none of these items are expected to represent a significant **environmental condition.**

**Historic tenants** at the Project Site include a **gasoline station** from at least 1931 to 1952; a **restaurant** from 1953 to 1969; and a **gasoline station** with a car wash from 1972 to 1979. Various professional tenants have occupied the Project Site since 1981. The existing office building is occupied by various professional office tenants.

As noted in the Phase I ESA, **historic occupancy** of the Project Site as a **gasoline station** from 1931 to 1952 and a **gasoline station** with a car wash from 1972 to 1979 **may represent** an **environmental concern**. **However**, given that the Project Site **has been** redeveloped with an **existing office building** with **three subterranean parking levels**, the **historic occupancies** of **gasoline stations** at the Project Site are **not likely** to **represent** a significant environmental concern.

(Emph. added.)

**First**, the Draft EIR's reliance on the Phase I ESA speculation that, "given that the Project Site has been redeveloped with an existing office building with three subterranean parking levels, the historic occupancies of gasoline stations at the Project Site are not likely to represent a significant environmental concern" is misplaced. While the Project's prior redevelopment may have been safe for *commercial office* and *non-residential* uses and for the present building's design and location, it may not necessarily be safe for the Project's proposed transient housing uses and changes to the landscaping, where the Project involves people residing, eating, sleeping at the Project site for extended periods of time, as well as removal of landscaping, construction of new amenities, a wading pool, and undergrounding of utilities.

Notably, each Phase I ESA is only good for one year and requires renewed analysis and review of databases. For example, a prior gasoline station that had an underground storage tank may not have been leaking before, but it may be leaking now. (**Exhibit S** [Geoforward.com website information, where Geoforward is an environmental firm preparing ESAs].) As also stated in an upcoming LACBA webinar series:

In the current real estate market, we are seeing many existing commercial properties being evaluated under **alternative redevelopment options** including residential or community uses. Along with the challenges of local permitting and entitlement processes, there are sometimes **overlooked elements** such as the **need to take a closer look** at the site **conditions** from an **environmental** standpoint. As an example, there may be land use covenants that need to be amended or removed; clients may have a series of "**clean**" **Phase I reports** and not realize that those

reports did **not sufficiently** consider a **potential residential land use**, particularly in the current **vapor intrusion** regulatory atmosphere; there may be additional investigation/remediation work necessary to enable a change in land use.

(**Exhibit U**, emph. added [Informational re LACBA webinar series].)

As such, Phase I ESA’s or the Draft EIR’s reliance on the rebuilding of the Project site to conclude that the Project Site is *clean* and safe from hazards is not supported.

**Second**, the Draft EIR fails to mention several critical details from the Phase I ESA, including *all* of the Phase I ESA findings of “identified” hazardous materials on the Project Site, as shown in the screenshot below from the Phase I ESA:

#### 4.1 SITE RECONNAISSANCE FINDINGS

Yes	No	Observation
	X	Aboveground Storage Tanks (ASTs) and Underground Storage Tanks (USTs)
X		Identified Hazardous Materials
X		Polychlorinated Biphenyls (PCBs) – Electric or Mechanical Equipment Likely to Contain Fluids
X		Radioactive Man-Made Materials
	X	Pits, Ponds, and Lagoons
	X	Septic Tanks and Cesspools
X		Wells, Cisterns, Sumps, and Drains
	X	Wastewater or Grease Interceptors
	X	Interior Stains or Corrosion
	X	Strong, Pungent, or Noxious Odors
	X	Pools of Liquid
	X	Stained Soil or Pavement
	X	Stressed Vegetation
X		Other

(DEIR, Appendix E, p. 4/pdf p. 13.)

Also, Phase I ESA acknowledges that the Project Site is listed on *several* **hazardous materials** databases, as shown from the Phase I ESA’s screenshot below:

### Environmental Databases

The Site was identified on numerous environmental databases due to being a hazardous waste generator in 1999, 2013, 2017, and 2020. No violations were identified on these databases. The Site was identified on the HAZNET database for generating the following hazardous waste:

- Off-specification, aged, or surplus organics in 2016, 2018, 2020, and 2021
- Liquids with pH less than or equal to two in 2020
- Other organic solids in 2020 and 2021

The Site was also identified on the Emergency Response Notification System (ERNS) and the California Hazardous Material Incident Report System (CHMIRS) on April 7, 2007, for the release of dirt and dust from the roof that washed down with a non-butyl based soap into the storm drain due to operator error. The cleanup was completed by Infiniti Environmental. No further cleanup was required. The appearance of the Site on these databases reflects proper disposal of hazardous waste. Based on a lack of violations and that the release of dirt, dust, and soap was cleaned up, these listings are not considered to represent a significant environmental concern.

(DEIR, Appendix E/Phase I ESA, p. ii/pdf p. 6.)

Critically, the Draft EIR discounts the methane risks at the Project site, which – per Phase I ESA – need to be studied. As the Phase I ESA provides:

The Site is located within the City of Long Beach Methane Gas Mitigation Zone recognized by the Long Beach Department of Development Services. For sites within the Methane Gas Mitigation Zone, the Long Beach Department of Development Services, through Chapter 18.79 of the Long Beach Building Code, requires that subsurface soil vapor sampling for methane be conducted prior to any new development.

(DEIR, Appendix E/Phase I ESA, p. iv/pdf p. 8.)

Hazards and dangers of methane gas and oil wells have been acknowledged by the City of Los Angeles,<sup>13</sup> including Division 71, Sec 91.7101 through 91.7109, as well as CA Building Code, both of which require specific mitigation measures.

Based on So-Cal’s caution:

### **“METHANE AND HEALTH AND SAFETY**

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<sup>13</sup> [https://www.ladbs.org/docs/default-source/publications/ordinances/methane-code---ordinance-no-175790.pdf?sfvrsn=d8eeb53\\_10](https://www.ladbs.org/docs/default-source/publications/ordinances/methane-code---ordinance-no-175790.pdf?sfvrsn=d8eeb53_10)

Methane is non-toxic and creates no hazard when inhaled in limited quantities; however, if large quantities of natural gas or methane is allowed to displace air, lack of oxygen may result in suffocation.

Methane can be flammable when mixed with air between certain concentrations (4.5 percent to 15 percent) and where there is an ignition source.

SoCalGas® conducts extensive safety programs to prevent the escape of natural gas from its system; and as a health and safety precaution, adds a distinctive odor to natural gas so most people can easily notice its presence.

If you smell a natural gas odor, hear the hissing sound of gas escaping or see other signs of a leak, REMAIN calm. DON'T smoke or light a match, candle or other flame. DON'T turn electrical appliances or lights on or off, operate machinery, or use any device that could create a spark. IMMEDIATELY EVACUATE the area, and from a safe location, call SoCalGas at 1-800-427-2200, or call 911 if the damage results in a natural gas leak that may endanger life or cause bodily harm or property damage.”<sup>14</sup>

Thus, methane gas may be dangerous to public health depending on its concentrations.

In addition, the City of Los Angeles' Methane Ordinance mentions about *fire* hazards of methane:

“WHEREAS, there was a **fire** in the **Fairfax Area** of the City of Los Angeles in **1985**, due to **high volume** of **methane gas seepage** through cracks in the concrete floor of a building;

WHEREAS, in Council File No. 01-1305, the City Council directed the City's Departments of Building and Safety, Engineering, and Planning, as well as, the Chief Legislative Analyst and Office of Administrative and Research Services, to form a work group and recommend uniform safety requirements regarding methane, for **all future** development throughout the City;

WHEREAS, a study by the work group was conducted regarding areas throughout the City of Los Angeles **to identify areas** where subsurface methane gas may be found;...”

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<sup>14</sup> <https://www.socalgas.com/stay-safe/methane-emissions/methane-and-health-and-safety#:~:text=Methane%20is%20non%2Dtoxic%20and,oxygen%20may%20result%20in%20suffocation.>

In light of these fire hazards and according to these directives, the City of Los Angeles mapped *all* the sites in the Project as being in *methane zone*.

Further, the City of Los Angeles' methane ordinance provides *general* methane mitigation measures, and *specific* methane mitigation measures. Thus, under SEC. 91.7103. GENERAL METHANE MITIGATION REQUIREMENTS:

All new buildings and paved areas located in a Methane Zone or Methane Buffer Zone shall comply with these requirements and the Methane Mitigation Standards established by the Superintendent of Building. The Methane Mitigation Standards provide information describing the installation procedures, design parameters and test protocols for the methane gas mitigation system, which are not set forth in the provisions of this division.

The City of LA's methane ordinance then lists numerous mitigation standards, including methane testing at the project sites, that must be followed by the City of Long Beach and not ignored.

In addition, the Methane Ordinance provides *additional* remedial measures:

“SEC. 91.7109. ADDITIONAL REMEDIAL MEASURES. 91.7109.1.

**General Remedial Measures.**

In the event the concentration of methane gas in any building located in a Methane Zone or Methane Buffer Zone reaches or exceeds 25 percent of the minimum concentration of gas that will form an ignitable mixture with air at ambient temperature and pressure, the owner shall hire an engineer to investigate, recommend and implement mitigating measures. These measures shall be subject to approval of this Department and the Fire Department. 91.7109.2.

**Abandoned Oil Well.**

Any abandoned oil well encountered during construction shall be evaluated by the Fire Department and may be required to be re-abandoned in accordance with applicable rules and regulations of the Division of Oil, Gas and Geothermal Resources of the State of California. Buildings shall comply with these provisions and the requirements of **Section 91.6105 of this Code, whichever is more restrictive.**”

(Emph. added.)

In addition, Section 91.6105 of the Building Code provides:

**SEC. 91.6105. SEPARATION FROM OIL WELLS.**

**(Amended by Ord. No. 186,488, Eff. 12/27/19.)**

No school, hospital, sanitarium or **assembly occupancy** shall be within **200 feet** from the center of the oil well casing.

No public utility fuel manufacturing plant or public utility electrical generating, receiving or distribution plant shall be located within 200 feet from the center of the oil well casing.

**No building more than 400 square feet** ( $37 \text{ m}^2$ ) in area **and taller than 36 feet in height** shall be erected **within 50 feet** from the center of an oil well casing.

**A distance separation** between the exterior wall of the building and the **center of an oil well casing** shall be maintained with a horizontal distance equal to **1-1/2 times the building's height**, provided however, that that distance need not exceed 200 feet. The building height for this provision shall be measured vertically from the adjacent lowest ground elevation to the ceiling of the top story.

**EXCEPTIONS:** The distance separation may be reduced to the following:

1. 35 feet separation if a solid 6 inches thick masonry wall and no shorter than 6 feet tall to be constructed within 50 feet from the building in between the oil well and all portions of the building.
2. 26 feet if any portion of the building exterior walls within 50 feet from the center of an oil well casing shall be constructed with no openings and one hour fire resistive construction with a 3 foot high fire rated parapet.
3. 15 feet if any portion of the building exterior walls within 50 feet from the center of an oil well casing shall be constructed with no openings and two-hour fire resistive construction with a 3 foot high fire rated parapet.

The provisions specified within this section shall not apply to oil wells that have been abandoned per LAMC Section 57.5706.3.16 and in accordance

with the applicable rules and regulations of the Division of Oil, Gas and Geothermal Resources of the State of California.

Here, Phase I ESA of the Project provides that there are *wells* and *sumps* on the Project site. Phase I ESA also provides that the Project is located in methane zone. And the Project proposes to bring 593 students onto the Project site. Moreover, despite the adaptive reuse of the existing building, the Project site will involve grading and construction, including to upsize or add utility pipes. In other words, the Project involves soil disturbance. It is, therefore, reasonably foreseeable that the Project presents a fire and contamination risks for both the students on the Project site and also the surrounding environment due to the disturbance of soils on the Project Site.

And notwithstanding, the Draft EIR disclaims the need for further methane testing or methane dangers by relying only on the claim that no re-development is anticipated at the Project site. The Draft EIR claims:

#### Methane

The Project Site is located within the City of Long Beach Methane Gas Mitigation Zone. For sites within the Methane Gas Mitigation Zone, the Long Beach Department of Development Services, through Chapter 18.79 of the Long Beach Municipal Code, requires that subsurface soil vapor sampling for methane be conducted prior to any new development. Therefore, a methane survey would be required if the Project Site is to be re-developed. The **Project involves** the **adaptive reuse** of the existing office building on-site and does not include any new development within the Project Site. **As such**, Chapter 18.79 of the Long Beach Municipal Code is not applicable to the Project, and the Project would **not conduct** subsurface **soil vapor sampling** for methane.

(DEIR, p. 4.7-9—4.7-10, *emph. added.*)

For reasons mentioned above, the City's disclaimer of methane hazards disregards the fire risks, as well as the fact that the Project proposes *both* re-development (construction activities and soil disturbance) *and* also change of use from office to student dormitory, requiring methane testing to prevent methane contamination.

Lastly, Phase I ESA admits that the Project Site may have asbestos, lead, PCB, radon and other hazardous materials which are dangerous for people's health:

The current Site building was constructed prior to bans using asbestos-containing building materials (ACBMs), lead-based paint (LBP), and

polychlorinated biphenyls (PCBs) in electrical equipment came into effect in 1989, 1978, and 1978, respectively. No testing is known to have been performed to evaluate for the presence of ACBMs, LBP, or PCBs at the Site.

(DEIR, Appendix E, Phase I ESA, p. iv/pdf p. 8.)

And yet, no testing of the Project site for asbestos, lead, PCBs or radon was requested at the time of Phase I ESA or was performed, while radon testing exceeded safety levels at one location. (DEIR, Appendix E, Phase I ESA, pp. 5-7.)

It is undisputed that both *lead* and *asbestos* are dangerous to people's health. While intact asbestos by itself may not be hazardous, damaged or disturbed asbestos may release asbestos fibers and become a health hazard.<sup>15</sup> Per Occupational Health and Safety Administration's ("OSHA") description:

#### **What are the hazards of asbestos?**

Asbestos is well recognized as a health hazard and its use is now highly regulated by both OSHA and EPA. Asbestos fibers associated with these health risks are too small to be seen with the naked eye. Breathing asbestos fibers can cause a buildup of scar-like tissue in the lungs called asbestosis and result in loss of lung function that often progresses to disability and death. Asbestos also causes cancer of the lung and other diseases such as mesothelioma of the pleura which is a fatal malignant tumor of the membrane lining the cavity of the lung or stomach. Epidemiologic evidence has increasingly shown that all asbestos fiber types, including the most commonly used form of asbestos, chrysotile, causes mesothelioma in humans.

(OSHA's Definition of "Asbestos" on its Official Website.)<sup>16</sup>

Similarly, *lead* is dangerous to people and their families. Per OSHA's report:

Lead has been poisoning workers for thousands of years. Lead can damage the central nervous system, cardiovascular system, reproductive

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<sup>15</sup> See, <https://www.cpsc.gov/safety-education/safety-guides/home/asbestos-home>; see also, medical conditions associated with asbestos: [https://www.atsdr.cdc.gov/asbestos/health\\_effects\\_asbestos.html](https://www.atsdr.cdc.gov/asbestos/health_effects_asbestos.html)

<sup>16</sup> See, <https://www.osha.gov/asbestos>

system, hematological system, and kidneys. When absorbed into the body in high enough doses, lead can be toxic.

In addition, workers' lead exposure can harm their children's development. Short-term (acute) overexposure--as short as days--can cause acute encephalopathy, a condition affecting the brain that develops quickly into seizures, coma, and death from cardiorespiratory arrest.

Short-term occupational exposures of this type are highly unusual but not impossible. Extended, long-term (chronic) overexposure can result in severe damage to the central nervous system, particularly the brain. It can also damage the blood-forming, urinary, and reproductive systems. There is no sharp dividing line between rapidly developing acute effects of lead and chronic effects that take longer to develop.

(OSHA report, 2004 *Lead in Construction*, p. 3)<sup>17</sup>

OSHA also documents the adverse effects of lead on people's reproductive health:

#### REPRODUCTIVE RISKS

Lead is toxic to both male and female reproductive systems. Lead can alter the structure of sperm cells and there is evidence of miscarriage and stillbirth in women exposed to lead or whose partners have been exposed. Children born to parents who were exposed to excess lead levels are more likely to have birth defects, mental retardation, or behavioral disorders or to die during the first year of childhood.

Workers who desire medical advice about reproductive issues related to lead should contact qualified medical personnel to arrange for a job evaluation and medical followup--particularly if they are pregnant or actively seeking to have a child. Employers whose employees may be exposed to lead and who have been contacted by employees with concerns about reproductive issues must make medical examinations and consultations available.

(OSHA report, 2004 *Lead in Construction*, p. 4.)

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<sup>17</sup> See, <https://www.osha.gov/sites/default/files/publications/osha3142.pdf>

The Project's unmitigated impacts of lead and asbestos (and the disturbance of the soil of a potentially contaminated site, as discussed *infra*) may have significant impacts and broader consequences, including through polluting the wetlands, the groundwater and the surface waters close to the Project Site. As described by the report on the Federal Aviation Administration's website:

Water resources are surface waters and groundwater that are important in providing drinking water and in supporting recreation, transportation and commerce, industry, agriculture, and aquatic ecosystems. **Surface water, groundwater, floodplains, and wetlands do not** function as **separate** and isolated components of the watershed, but rather as a **single, integrated** natural system. **Disruption** of any one part of this system can have **consequences** to the functioning of the **entire** system.

....

#### 14.1. Wetlands

For regulatory purposes under the Clean Water Act (CWA), the term wetlands means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Areas covered with water for such a short time that there is no effect on moist-soil vegetation are not considered wetlands, nor are the waters of streams, reservoirs, and deep lakes. **Wetlands** provide many benefits to the **human, biological, and hydrological** environment, including **habitat** for **fish** and **wildlife, water quality** improvement, **flood storage**, and opportunities for **recreation**.

(FAA Report/Publication, 2/2020, p. 14-2, *emph. added.*)<sup>18</sup>

CEQA Guidelines mandate: “*Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project.* The EIR must ... permit the significant effects of the project to be considered in the full environmental context.” (CEQA Guidelines § 15125(c), *italics added.*) The EIR here fails this mandate.

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<sup>18</sup> See also, various regulations to protect wetlands from potential adverse impacts at pp. 14-2—5: [https://www.faa.gov/about/office\\_org/headquarters\\_offices/apl/envirom\\_policy\\_guidance/policy/faa\\_nepa\\_order/desk\\_ref/media/14-water-resources.pdf](https://www.faa.gov/about/office_org/headquarters_offices/apl/envirom_policy_guidance/policy/faa_nepa_order/desk_ref/media/14-water-resources.pdf)

The Draft EIR fails to duly address the dangers of the aforementioned hazards by relying solely on regulatory compliance:

Project construction would include grading and export of minor amounts of construction debris. Construction activity would comply with SCAQMD Rule 403, addressing fugitive dust sources, Rule 1166 addressing VOC emissions from excavating, grading, handling, and treating VOC-contaminated soil, and Rule 1466, requiring minimization of off-site fugitive dust emissions from earth-moving activities at sites containing specific toxic air contaminants. Compliance with the regulatory requirements associated with Project construction and the requirements of the NPDES Construction General Permit would reduce impacts to less than significant during Project construction activities.

(DEIR, p. 4.7-13.)

The EIR's reliance on regulatory compliance measures is not warranted and does not support its finding that the Project's hazards impacts will be less than significant.

Last but not least, Phase I ESA does not provide conclusive evidence that no *gas* station *USTs* are present on the Project site and also concedes that the Project site has been historically used as a dry cleaner site, presenting yet another REC overlooked by the EIR:

According to EDR, this address was identified on the EDR Historical Dry Cleaners database in 1976 and on the Long Beach UST database with no tanks listed. While this address is not currently associated with the Site, it is likely a historic Site address based on its location and reviewed building permits. Permits reviewed indicated that a gasoline station and a car wash were demolished in 1979, prior to the development of the current Site structure in 1981. Based on the UST listing indicating no tanks and that the Site consists of three subterranean parking levels, USTs associated with the former gasoline station were likely removed prior to or during redevelopment of the Site.

(DEIR, Appendix E, Phase I ESA, p. 18/pdf p. 27.)

By understating the above-noted myriad of hazards and hazardous materials impacts, the Draft EIR also understates the Project's adverse impacts on human health and fails to duly mitigate those. For this purpose, the Draft EIR is legally inadequate, as it fails its informational and good faith disclosure purpose of CEQA and leaves the decisionmakers uninformed about the Project's impacts and environmental price tag.

## 6. Land Use Impacts

The Draft EIR's finding of less than significant land use impacts is also flawed as it relies on the erroneous assumption that the Project's consistency with the General Plan and applicable plans can be achieved by simply *changing* those plans. The Draft EIR also presumes that the Project is close to a major transit stop. Not so.

The Draft EIR concedes that the Project seeks General Plan amendments and concludes that – *with* the approval of such amendments – the Project will not have land use impacts and will not have conflicts with applicable plans:

### Project Impacts

*Threshold LUP-2: Would the project cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?*

Impact LUP-2: Less than Significant Impact.

The Project Site is designated as a CC PlaceType per the City's General Plan Land Use Element. The CC PlaceType permits commercial uses that are automobile oriented. The Project proposes a General Plan Amendment/Map Change to change the existing land use designation of the Project Site from CC to NSC-Moderate. The NSC-Moderate PlaceType accommodates moderate density mixed use development that is typically located near single-family neighborhoods.<sup>5</sup> The NSC-Moderate PlaceType adheres to the Project's need for residential occupancy. Upon City approval of the General Plan Amendment/Map Change, the Project would be consistent with the NSC-Moderate PlaceType as a residential use for students.

The Project Site is zoned as CCA, which permits retail and service uses for an entirety community including convenience and comparison shopping for goods and associate services. The Project also proposes a Zoning Code Amendment/Map Change to modify the existing zone from CCA to MU-3. Special Group Residences are permitted in the MU-3 Zoning District with approval of a CUP; the Project includes an application for the required CUP to allow for dormitory use as a Special Group Residence. The MU-3 Zoning District is intended for the highest intensity neighborhood activity centers in proximity to bus routes and multi-modal corridors. The Project Site, with its proximity to multiple transit facilities and freeways, would be consistent with the purpose of the

MU-3 Zoning District, upon approval of the proposed Zoning Code Amendment/Map Change by the City.

The following analysis describes the Project's consistency with current regional and local plans and policies pertaining to land use and planning, which were outlined in further detail in the Regulatory Framework discussion above.

Accordingly, upon approval of the Project's entitlements by the City, the Project would not conflict with the Project Site's General Plan and zoning designations, SCAG 2024 RTP/SCS, General Plan, or Zoning Ordinance. As such, the Project would not cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect, and impacts would be less than significant.

(DEIR, p. 4.9-4—4.9-5.)

The City's reasoning is incorrect. The EIR has to reveal the Project's inconsistency and conflicts *as against* the existing (unchanged) applicable plans. "The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform." (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 538-544.)

Also, separate from CEQA, if a Project, as here, is inconsistent with the general plan, it not only may cause land use impacts but it also violates the City's General Plan and, in turn, violates the State Planning and Zoning Law's requirement that the proposed projects be consistent with General Plans, to ensure orderly growth.

Moreover, to the extent the City relies on the Project's purported consistency with the General Plan based on the alleged proximity of the Project to transit corridors (DEIR, p. 4.9-6), that reliance is misplaced. There is no evidence that the Project is indeed close to public transit, as it is contemplated by CEQA or law, including AB 2097. (See Section IV.A, *supra*.) One bus line traveling east/west is not sufficient to constitute a major transit stop, as discussed earlier. A major transit stop is, by definition, an *intersection* of two or more buses lines. There is also no evidence that the existing bus line traveling east/west meets the presently updated 20-minute service intervals at peak hours.

Similarly, the City's consistency finding based on the claim that the Project reduces air quality and GHG impacts (DEIR, p. 4.9-6) is misplaced. As discussed earlier, the Project's GHG and air quality analyses are legally flawed and improperly rely on *net* impacts and also on understated vehicle miles or trips. It is reasonably foreseeable that the Project may have significant air quality and GHG impacts and not reduce those.

As such, the City's conclusion of less than significant impacts and consistency with the General Plan is legally inadequate, erroneous, and violates both CEQA and the State's Planning and Zoning Law and the City's own General Plan.

## 7. Traffic, Emergency, and Cumulative Impacts

In view of the above noted inadequate project description, inaccurate baseline assumptions, and improper reliance on *vehicle trip credits* and AB 2097, the Project may have significant traffic and parking impacts. Briefly, the EIR presumes that the Project will generate only 507 daily trips, solely based on crediting and discounting over 1,100 daily vehicle trips of the present office uses. **First**, there is no evidence that the present uses indeed generate over 1,100 daily vehicle trips. **Second**, even if they do, those trips should not be discounted but rather *added* to the Project's impacts since those offices will not close down but rather move to a different location and continue to generate trips.

**Third**, the Project improperly claims that it qualifies for AB 2097 parking reduction and hence ignores the impacts of the reduced parking while at the same time providing tandem parking, and far less parking spaces for potentially 593 cars (of 593 students). The secondary impacts of parking shortage are still a concern for CEQA. They generate more traffic, more gridlock, more air quality, GHG, noise, and other impacts.

**Fourth**, the City disregards the Project's cumulative impacts by claiming that there are no related *new* projects within 1 mile. However, as noted earlier, cumulative impacts are not limited only to the Project's impacts along with *new* uses, but rather past, present, and probable future projects. Also, the Housing Element of the City's General Plan marks the 5155 E. Pacific Coast Highway site as a potential residential development site, which does constitute a *new probable future* project for purposes of a cumulative impact analysis. In addition, the City's records show that Caltrans may be implementing certain transportation changes near the Project site:

1. Pacific Coast Highway is a State highway under the jurisdiction of the California Department of Transportation (Caltrans). A street

improvement encroachment permit from (Caltrans) will be required for all work within the Pacific Coast Highway right-of-way. The Developer shall contact Caltrans to request additional information regarding its permitting process and provide a copy of the approved permit and design plans to the Department of Public Works.

m. There appear to be ongoing/future City and Caltrans street improvement projects adjacent to the project site along Anaheim Street and Pacific Coast Highway. As such, Anaheim street may be under a street moratorium when the project construction commences. The Developer shall provide written approval from the City to implement any street improvements prior to the end of the existing moratorium, in the form of a discretionary permit for excavation. Any work within a street under moratorium requires a complete grind and overlay from block to block and the Applicant shall adhere to this requirement. Applicant shall also coordinate with Caltrans regarding any conflict with their proposed improvements along Pacific Coast Highway.

(Exhibit S, p. 6.)

In sum, the City’s traffic impact analysis *omits* critical details; the Project’s traffic impacts and potential conflicts with other plans, and also improperly relies on flawed and incorrect baseline assumptions to understate the Project’s impacts. For these reasons, the Draft EIR is legally deficient as to traffic impact analysis and fails good faith disclosures and informational mandates of CEQA.

## 8. Noise Impacts

The Draft EIR identifies the following sensitive receptors near the Project:

**Table 4.10-7: Sensitive Receptors**

Receptor Description	Distance <sup>1</sup> and Direction from the Property Line of Project Site
Multi-Family Residential Dwellings	55 feet to the west
Single-Family Residential Dwellings	55 feet to the west
Rock Christian Fellowship	175 feet to the east
Cambrian Homecare	290 feet to the east
1. Distances are measured from the Project Site boundary to the property line. Source: Google Earth, 2024	

(DEIR, p. 4.10-13.)

Yet, the Draft EIR concludes the Project will have no construction noise impacts since – for some reason – construction will be mostly located 170 feet from sensitive uses. This estimate is flawed, however, since construction equipment and trucks may still be driving, parking, staging, or idling *near* the sensitive receptors and generate noise close to sensitive receptors.

Also, the Draft EIR's conclusion of no operational noise impacts is based on understatement of parking and traffic volumes. The Draft EIR claims, for example, that the Project's parking will have no noise impacts since it is enclosed in 3 levels of subterranean parking. However, the Draft EIR fails to acknowledge that the subterranean parking fails to provide parking for all 593 students and employees. As such, a *part* of the Project's generated parking uses may be on-street and will not be enclosed, thereby generating traffic noise.

Similarly, the Draft EIR claims that the Project will have less *traffic* noise only because it improperly presumes that the current uses already generate over 1,188 daily trips and that the Project's net trips, therefore, will be only 507 or even 291:

*Operational Traffic Noise*

According to the Project's Traffic Generation Analysis and Vehicle Miles Traveled Screening (Kimley-Horn, 2024), the Park Tower Student Housing Project would result in approximately 1,695 daily trips. The existing use on site generates 1,188 daily trips. Therefore, compared to the existing condition, the Project is anticipated to generate 507 net daily trips. The project is expected to generate a net of 291 average daily trips, which would result in noise increases on project area roadways. In general, a traffic noise increase of less than 3 dBA is barely perceptible to people, while a 5 dBA increase is readily noticeable (Caltrans, 2013). Generally, traffic volumes on project area roadways would have to approximately double for the resulting traffic noise levels to increase by 3 dBA. According to Citywide Traffic Flow maps, the roadways in the project area have between 10,000 and 26,300 daily trips. Therefore, the Project would not result in a doubling of trips and permanent increases in ambient noise levels more than 3 dBA would not occur.

Therefore, there would not be any new operational traffic noise impacts.

(Draft EIR, p. 4.10-19.)

For all reasons mentioned in Section IV.B.1, *supra*, the Draft EIR's presumptions about the reduced traffic trips and crediting of the 1,188 trips are in error, making its conclusion of no traffic noise impacts also unsupported.

For this reason, too, the Draft EIR is legally inadequate and fails CEQA's informational mandates.

## V. CONCLUSION

In view of the above-noted concerns, we respectfully request that the comment period for the EIR be extended and continued and the EIR to be recirculated to include the omitted information and provide meaningful analysis, identification, and mitigation of impacts as CEQA requires. We also request that a Phase II ESA be conducted to resolve and investigate issues that Phase I skipped or understated, including but not limited to soil sampling, methane testing, and asbestos and other hazards evaluation of the Project site. “CEQA contemplates *serious* and not superficial or pro forma consideration of the potential environmental consequences of a project.” (*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1347, 272 Cal.Rptr. 372; emphasis added; *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 593, fn. 3.)

If the City has any questions or concerns, please feel free to contact my Office.

Sincerely,



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Naira Soghatyan

Attorneys for Western States Regional Council of Carpenters

### **Attached:**

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling (**Exhibit A**);

Air Quality and GHG Expert Paul Rosenfeld CV (**Exhibit B**);

Air Quality and GHG Expert Matt Hagemann CV (**Exhibit C**);

2208-43\_CSPR\_22-012\_Letter – City’s PRA Production (**Exhibit D**);

1.\_20220630\_-City\_of\_LB\_Pre-Development Meeting – City’s PRA Production (**Exhibit E**);

7.\_Planning\_Invoice\_-5150\_E\_PCH\_2301-01 – City’s PRA Production (**Exhibit F**);

Los Angeles City's Supplemental Plan Review Checklist re Transient Housing (**Exhibit G**);

Printouts of the Project Site's Descriptions and ads from various websites (**Exhibit H**);

Printout of the Project Site's information showing it is also used for ProHealth Medical Group (**Exhibit I**);

Planner\_to\_DB-applicant\_3.27.2024 – City's PRA Production (**Exhibit J**);

Planner\_to\_AH\_2.14.2023 – City's PRA Production (**Exhibit K**);

Site Inventory of the City of Long Beach's Housing Element (**Exhibit L**);

Printouts of the *search* of the Project Site on the Housing Element Site Inventory Map (**Exhibit M**);

Information on the Wildfires in Los Angeles Area, January 2025 (**Exhibit N**);

SWAPE Expert Report for GUSD Project (**Exhibit O**);

Offroad Booklet re construction equipment use of natural gas (**Exhibit P**);

December 11, 2024 Communications re City's Failure to include Appendix B on the City's or CEQAnet's websites (**Exhibit Q**);

Information re Project Site as Premier Long Beach Virtual Office in Long Beach CA (**Exhibit R**);

2208-43\_SPR\_22-013\_-\_Response\_Letter\_11.18.2022-attachments-Redacted – City's PRA production (**Exhibit S**);

GEO Forward's website information on the validity of Phase I ESAs (**Exhibit T**);

Information on LACBA's webinar re Real Estate Land Use Conversions – Environmental Considerations (**Exhibit U**);

DB\_applicant to Planner 10.26.2022 2 – City's PRA Production (**Exhibit V**); and

Planner\_to\_AO\_AS\_L\_11.3.2022 – City's PRA Production (**Exhibit W**).