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February 18, 2025

VIA EMAIL AND U.S. MAIL

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Re: Comments on Draft Supplemental Environmental Impact Report for Entrada South and Valencia Commerce Center Project (SCH No. 2000011025)

Dear Ms. Sackett, Ms. Bodek, and Ms. Zavala:

On behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”), we submit these comments on the Draft Supplemental Environmental Impact Report (“DSEIR”) prepared for the Entrada South and Valencia Commerce Center (VCC) Project (SCH No. 2000011025) (“Project”), proposed by Newhall Land and Farming Company (“Applicant”).¹

The Project proposes to develop 1,574 residential units and 730,000 square feet of commercial development. This represents a reduction of 151 units from the 2017 Project and an additional 280,000 square feet of commercial floor area as compared to the 2017 Project.² The Project is located within the planning boundary of the Newhall Ranch Resource Management and Development Plan and

¹ County of Los Angeles, Entrada South and Valencia Commerce Center (VCC) Project Draft Supplemental Environmental Impact Report (Dec. 2024) (hereinafter “DSEIR”).

² DSEIR, p. 3.0-2. [The 2017 Project refers to resource management activities and development facilitated by the RMDP/SCP, as approved by CDFW in 2017 for the Entrada South and VCC Planning Areas.]

Spineflower Conservation Plan approved by the California Department of Fish and Wildlife (“CDFW”) for which an EIR was certified in 2017 (SCH No. 2000011025) (referenced in the DSEIR and herein as the “State-certified EIR”). The DSEIR provides that construction of the Project will temporarily impact Hasley Creek and Castaic Creek, the DSEIR proposes restoration and revegetation following construction modifications. The State-certified EIR concluded that impacts associated with the 2017 Project would result in significant and unavoidable project level impacts related to air quality and land use, and cumulative impacts to air quality, and noise.

We have conducted an initial review of the DSEIR with the assistance of our technical consultants, air quality and hazardous resources expert Komal Shukla, Ph.D., and acoustics expert Jack Meighan, M.S.³ Based upon our review of the DSEIR and supporting documentation, we conclude that the DSEIR fails to comply with the requirements of CEQA.

As explained more fully below, the DSEIR fails to provide an accurate Project description, and does not accurately disclose analyze or mitigate the Project’s potentially significant air quality, health risk, noise, and land use impacts. The Project’s noise, air quality, and health risk impacts are more severe than analyzed in the State-certified EIR. The impacts of noise and vibration constitute new significant effects not discussed in the previous EIR, because the State-certified EIR did not analyze the significant noise and vibration impacts at the radio station within the Higher Vision Church. As a result of its shortcomings, the DSEIR lacks substantial evidence to support its conclusions and fails to properly mitigate the Project’s significant environmental impacts.

I. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and the District Council of Ironworkers, along

³ Dr. Shukla’s and Mr. Meighan’s technical comments and curricula vitae are attached hereto as **Exhibits A, and B** respectively. The County must separately respond to these technical comments. Pub. Res. Code § 21091(d); 14 Cal. Code Regs (“CCR” or “CEQA Guidelines”) §§ 15088(a), (c).

with their members, their families, and other individuals who live and work in Los Angeles and surrounding communities.

Individual members of CREED LA and its member organizations include Garret Lewis, Aimee Vazquez, and Andrew Berg. These individuals live, work, recreate, and raise their families in Santa Clarita and LA County. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

In addition, CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. LEGAL BACKGROUND

CEQA has two basic purposes, neither of which the DSEIR satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.⁴ CEQA requires that an agency analyze potentially significant environmental impacts in an EIR.⁵ The EIR should not rely on scientifically outdated information to assess the significance of impacts, and should result from “extensive research and information gathering,” including consultation with state and federal agencies, local officials, and the interested public.⁶ To be adequate, the EIR should evidence the lead agency’s good faith effort at full disclosure.⁷ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental

⁴ CEQA Guidelines, § 15002, subd. (a)(1).

⁵ See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.

⁶ *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm.* (“Berkeley Jets”) (2001) 91 Cal.App.4th 1344, 1367.; *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 620.

⁷ CEQA Guidelines, § 15151; see also *Laurel Heights Improvement Assn. v. Regents of University of California* (“Laurel Heights I”) (1988) 47 Cal.3d 376, 406.

changes before they have reached ecological points of no return.”⁸ “Thus, the EIR protects not only the environment but also informed self-government.”⁹

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.¹⁰ 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.”¹¹ If a project has a significant effect on the environment, the agency may approve the project only upon a 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 section 21081.¹²

A. Subsequent CEQA Review

When a previously approved project for which an EIR has been prepared is modified, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.¹³

In assessing the need for subsequent or supplemental environmental review, the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events have occurred:

⁸ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁹ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).

¹⁰ CEQA Guidelines, § 15002, subd. (a)(2)-(3); *Berkeley Jets*, *supra*, 91 Cal.App.4th at 1354.

¹¹ CEQA Guidelines, § 15002, subd. (a)(2).

¹² *Id.*, subd. (b)(2)(A)-(B).

¹³ Pub. Resources Code § 21166; CEQA Guidelines § 15162.

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.¹⁴

As these comments will demonstrate, the DSEIR fails to comply with the requirements of CEQA and may not be used as the basis for approving the Project. It fails in significant aspects to perform its function as an informational document that is meant “to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment” and “to list ways in which the significant effects of such a project

¹⁴ CEQA Guidelines §§ 15162(a)(1)-(3).

might be minimized.”¹⁵ The use of inaccurate and flawed information on which the DSEIR bases its conclusions results in underestimated Project impacts. This, in turn, leads to a failure to comply with CEQA’s requirement that an agency mitigate “all significant environmental impacts to the greatest extent feasible, and that any remaining significant environmental impacts are acceptable due to overriding considerations.”¹⁶

Mitigation of impacts to the fullest extent feasible requires an agency to accurately quantify the severity of Project impacts, and because the DSEIR’s inadequate analyses underestimate the severity of the Project’s impacts, the County has failed to comply with CEQA and cannot approve the Project based upon the DSEIR’s analyses and conclusions.

As detailed herein and in the expert consultant reports attached hereto, the Project’s environmental impacts are more severe than analyzed in the 2017 State-certified EIR. The impacts of noise and vibration constitute new significant effects not discussed in the previous EIR, because the State-certified EIR did not analyze the significant noise and vibration impacts at the radio station within the Higher Vision Church. A revised and recirculated SEIR is required to analyze the new and more severe impacts of the Project.

III. THE PROJECT DESCRIPTION IS INADEQUATE

The DSEIR does not meet CEQA’s requirements because it fails to include an accurate and complete Project description, rendering the entire analysis inadequate. California courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”¹⁷ CEQA requires that a project be described with enough particularity that its impacts can be assessed.¹⁸ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project’s impacts and undermining meaningful public review.¹⁹ Accordingly, a lead

¹⁵ *Laurel Heights I*, *supra*, 47 Cal.3d at p. 391.

¹⁶ CEQA Guidelines, §§ 15090, 15091.

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

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

¹⁹ *Id.*

agency may not hide behind its failure to obtain a complete and accurate project description.²⁰

CEQA Guidelines section 15378 defines “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”²¹ “The term “project” refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval.”²² Courts have explained that a complete description of a project must “address not only the immediate environmental consequences of going forward with the project, but also all “*reasonably foreseeable* consequence[s] of the initial project.”²³ “If a[n]...EIR...does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law.”²⁴

A. The DSEIR Fails to Attach or Adequately Describe the Development Agreement

The DSEIR provides that the Development Agreement is a required Project approval. But, the DSEIR fails to attach a copy of the Development Agreement or to provide any details regarding the terms thereof. The DSEIR provides only that the “Development Agreement may establish commitments by the Applicant to provide additional and project benefits.²⁵

The County cannot make the necessary findings to approve the Project’s entitlements. Absent the Development Agreement in the record, the County cannot make the necessary findings that the Project is consistent with the Newhall Ranch Specific Plan. The Newhall Ranch Specific Plan requires that “All land use entitlements and permits (e.g., Development Agreements, Conditional Use Permits, and all subdivision maps) approved within the Specific Plan Area shall be

²⁰ *Sundstrom v. County of Mendocino* (“*Sundstrom*”) (1988) 202 Cal.App.3d 296, 311.

²¹ CEQA Guidelines § 15378.

²² *Id.*, § 15378(c).

²³ *Laurel Heights I*, 47 Cal. 3d 376, 398 (emphasis added); *see also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

²⁴ *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

²⁵ DSEIR, p. 2.0-19.

consistent with the Specific Plan.”²⁶ Without a copy of the Development Agreement in the record, the County cannot make the findings required by CEQA that the Project is consistent with the Specific Plan, and the public cannot be assured the Project is consistent with the Specific Plan before the Project is approved.

The Initial Study prepared for the Project by the County on October 7, 2021 provided that the County and the Applicant may consider a Development Agreement in accordance with Government Code Section 65864 as part of the Modified Project.²⁷ The Initial Study provided: that “[the Supplemental EIR will address the Development Agreement as a discretionary entitlement, if applicable.”²⁸

But, the DSEIR does not contain any information regarding the Development Agreement beyond the following:

The Development Agreement would not increase the level of development or the disturbance footprint of the Modified Project. The Development Agreement may establish commitments by the Applicant to provide additional environmental benefits.²⁹

The DSEIR fails to include any substantive information about the proposed scope or terms of the Development Agreement, and the County failed to attach the Development Agreement to the Appendices of the DSEIR.

Thus, CREED LA and other members of the public have not had the opportunity to review the proposed Agreement and the DSEIR fails to analyze its terms.

A development agreement is a contract between an agency and a developer establishing certain development rights with any person having a legal or equitable interest in the property at issue. The purpose of a development agreement is generally to extend the life of the entitlements in exchange for the provision of public benefits and to reduce the economic risk of development.³⁰ While a development agreement must advance an agency’s local planning policies, it may

²⁶ County of Los Angeles, Newhall Ranch Specific Plan Volume I, Project No. 94087, SCH No. 95011015 (May 2003), p. 3-2.

²⁷ Los Angeles County Department of Regional Planning, Entrada South and Valencia Commerce Center Project Initial Study (Oct. 7, 2021).

²⁸ *Id.* at p. 18/106.

²⁹ DSEIR, p. 3.0-44.

³⁰ Gov. Code §§ 65864-65869.5.

also contain provisions that vary from otherwise applicable zoning standards and land use requirements as long as the project is consistent with the general plan and any applicable specific plan.³¹ Such provisions may result in significant impacts and land use inconsistencies that must be considered by the public and decision makers prior to approval. For this reason, it is critical that the terms of a proposed development agreement be disclosed to the public and analyzed during a project's CEQA review in order to determine whether the development agreement may have potentially significant impacts that are not otherwise inherent in the project.

When a development agreement is required to implement a project, it is considered part of the project under CEQA.³² Development agreements must be enacted in accordance with the Government Code and applicable local planning codes, and must undergo environmental review at the time of adoption. Therefore, the terms of any development agreement for the Project must be described in detail in the EIR and considered by the County's decision makers at the same time as the rest of the Project approvals.

Because the Development Agreement was not included in the DSEIR's analysis of the Project and has not been made available for public review, the DSEIR must be revised and recirculated in order to give the public an opportunity to comment on the Project's adverse impacts or mitigation measures that are changed by the terms of the Agreement.³³ Additionally, the public must have an opportunity to evaluate the specific public benefits conferred by the Agreement, as the County has great discretion in determining what constitutes a public benefit and must be given an opportunity to evaluate and comment on the Agreement. Examples of public benefits could include community workforce or skilled and trained workforce requirements, funds or community services provided to the County to offset air quality, traffic, and public health impacts associated with the Project. County residents and other members of the public must be given the opportunity to provide input to the County on what public benefits the County should require. As it stands, there is no evidence that the County has considered including any meaningful public benefits in return for conferring a generous extension of the land use entitlements for the Project.

³¹ *Id.*

³² See Gov. Code § 65864; 14 CCR §§15352(a), (b), 15378; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.

³³ 14 CCR §15088.5(a); *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112.

The County must release the Development Agreement to the public, and evaluate the environmental impacts of the Project in light of the proposed terms of the Agreement prior to approval of the Project. The County must also recirculate the DSEIR to include this analysis.

B. The Project Description Fails to Include Reasonably Foreseeable Backup Generators

The DSEIR fails to disclose potential backup/emergency stationary generators for the Project construction and operation. The DSEIR's project description does not address whether backup generators will be used during Project construction or operations, and the DSEIR's technical analyses assume no backup generators will be installed. The DSEIR does not disclose any conditions or mitigation measures that limit or prevent use of backup generators. The DSEIR must disclose and analyze the potential use of backup generators because (1) they are a reasonably foreseeable use and consequence of the Project, and (2) the use of backup generators will substantially increase the Project's significant environmental effects.

In *East Oakland Stadium Alliance v. City of Oakland*,³⁴ the Court of Appeal upheld an EIR's analysis of emissions from backup generators. The EIR's analysis assumed that generators would operate for 50 hours of testing and maintenance annually, while allocating no time for actual emergency use. In discussing the lead agency's duty to analyze backup generator emissions, the Court stated that "if the annual need for emergency generator use is reasonably foreseeable, the EIR was not entitled to disregard such use merely because it would occur at unpredictable times."³⁵ The Court explained that use of a generator was reasonably foreseeable because, "[a]s noted in the EIR, some parts of the Bay Area are subject to predictable, sustained power outages undertaken to reduce the risk of fire."³⁶ Thus, "[t]he EIR was required to make neither a generally applicable nor a worst-case assumption; rather it was required to make a reasonable estimate of likely annual use of the generators at the project site."³⁷

Here, as in *East Oakland Stadium Alliance*, back-up generators are a reasonably foreseeable consequence of the Project's construction and operation due

³⁴ (2023) 889 Cal. App. 5th 1226.

³⁵ *Id.* at 1252.

³⁶ *Id.* at 1253.

³⁷ *Id.*

to increasingly common Public Safety Power Shutoff (“PSPS”) events and extreme heat events. Extreme heat events (“EHE”) are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.³⁸ From January 2019 through December 2019, Southern California Edison reported 158 of their circuits underwent a PSP event.³⁹ In Los Angeles County, two circuits had 4 PSPS events during that period, lasting an average of 35 to 38 hours. The total duration of the PSPS events lasted between 141 hours to 154 hours in 2019. According to the California Public Utilities Commission (CPUC) de-energization report⁴⁰ in October 2019, there were almost 806 PSPS events that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers. The California Air Resources Board estimates that with 973,000 customers impacted by PSPS events in October 2019, approximately 125,000 back-up generators were used by customers to provide electricity during power outage.⁴¹ The widespread use of back-up generators to adapt to PSPS and EHE events suggests that back-up generators are a reasonably foreseeable consequence of the Project.

Backup generators commonly rely on fuels such as natural gas or diesel,⁴² and thus can significantly impact air quality, GHG emissions, and public health through toxic diesel particulate matter (“DPM”) emissions.⁴³ It is reasonably

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

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

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

⁴¹ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps>.

⁴² SCAQMD, Fact Sheet on Emergency Backup Generators, <http://www.aqmd.gov/home/permits/emergency-generators> (“Most of the existing emergency backup generators use diesel as fuel”).

⁴³ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps> (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at <https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff> (“When electric utilities de-energize their electric lines, the demand for back-up power increases. This demand for reliable back-up power has health impacts of its own. Of particular

foreseeable that the Project would require on-site backup generators during the Project's eight years of construction and during Project operation.

Generators can emit criteria air pollutants, greenhouse gases, and toxic air contaminants ("TACs"). Backup generators commonly rely on fuels such as natural gas or diesel,⁴⁴ and thus can significantly impact public health through DPM emissions.⁴⁵ Diesel back-up generators emit significant amounts of Nitrogen Oxides ("NOx"), sulfur dioxides ("SO2"), particulate matter ("PM10"), carbon dioxide ("CO2"), carbon monoxide ("CO"), and volatile organic compounds ("VOC").⁴⁶ The

concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts").

⁴⁴ SCAQMD, Fact Sheet on Emergency Backup Generators, <http://www.aqmd.gov/home/permits/emergency-generators> ("Most of the existing emergency backup generators use diesel as fuel").

⁴⁵ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps> (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at <https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff> ("When electric utilities de-energize their electric lines, the demand for back-up power increases. This demand for reliable back-up power has health impacts of its own. Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts").

⁴⁶ University of California, Riverside Bourns College of Engineering—Center for Environmental Research and Technology, Air Quality Implications Of Backup Generators In California, (March 2005), pg. 8, available at <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=84c8463118e4813a117db3d768151a8622c4bf6b>; South Coast AQMD, Fact Sheet on Emergency Backup Generators ("Emissions of Nitrogen Oxides (NOx) from diesel-fired emergency engines are 200 to 600 times greater, per unit of electricity produced, than new or controlled existing central power plants fired on natural gas. Diesel-fired engines also produce significantly greater amounts of fine particulates and toxics

DSEIR's failure to consider the reasonably foreseeable use of back-up generators results in an underestimation of the Project's air quality, greenhouse gas, and health risk impacts.

In sum, omission of the Project's generator usage during construction and operation results in an underestimation of the Project's reasonably foreseeable air quality, greenhouse gas, energy, and health risk impacts. Therefore, the DSEIR must be revised and recirculated to address the impacts of backup generators, revise this project description omission, and correct the affected impacts analyses to accurately disclose the Project's potentially significant air quality and health risk impacts associated with backup generators.

IV. THE DSEIR FAILS TO ADEQUATELY DISCLOSE AND MITIGATE POTENTIALLY SIGNIFICANT AIR QUALITY AND HEALTH RISK IMPACTS

An EIR must fully disclose all potentially significant impacts of a project, and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.⁴⁷ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁴⁸

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.⁴⁹ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.⁵⁰ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."⁵¹

emissions compared to natural gas fired equipment."), available at <http://www.aqmd.gov/home/permits/emergency-generators#Fact2>.

⁴⁷ 14 CCR § 15064(b).

⁴⁸ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

⁴⁹ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

⁵⁰ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁵¹ *Id.*; *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.’”⁵²

A. The Project’s Significant Health Risk Impacts Must Be Analyzed in a Health Risk Assessment

Due to the Project’s proximity to Interstate 5, the South Coast Air Quality Management District recommended a mobile source health risk assessment be prepared to disclose potential health risks.⁵³ The DSEIR provides that the cancer risk in the area is predominately related to nearby sources of diesel particulate matter (e.g., vehicular traffic on Interstate 5).⁵⁴ But, no health risk assessment was prepared, nor made part of the DSEIR’s administrative record.

The DSEIR provides that “[b]ased on SCAQMD guidance, the operational land use changes associated with the Modified Project would not be considered a substantial source of diesel particulate matter warranting a refined health risk assessment (HRA).”⁵⁵ Substantial evidence in Dr. Shukla’s comments demonstrates that the Project does constitute a land use change which must be considered a substantial source of diesel particulate matter emissions, due to the Project’s substantial increase in diesel particulate matter emissions from mobile sources, construction and operational backup generators, and construction equipment.⁵⁶

Further, Dr. Shukla’s comments demonstrate that, similar to criteria air pollutants, toxic air contaminants (TACs) originate from stationary, areawide, and mobile emission sources, contributing to elevated regional and localized health risks, particularly in high-traffic corridors, industrial zones, and areas adjacent to

⁵² *Berkeley Jets*, 91 Cal.App.4th at 1355.

⁵³ DSEIR, Appendix 1c – NOP Comment Letters, Letter from Lijin Sun Program Supervisor, CEQA IGR South Coast Air Quality Management District to Jodie Sacket, Senior Planner, County of Los Angeles, Regional Planning Department, Notice of Preparation of a Draft Supplemental Environmental Impact Report for the Proposed Entrada South and Valencia Commerce Center Project (SCH No.: 2000011025) (Nov. 2, 2021), p. 307 of 417, available at: <https://ceqanet opr.ca.gov/2000011025/14/Attachment/sqOa73>.

⁵⁴ DSEIR, p. 5.1-30.

⁵⁵ DSEIR, p. 5.1-62.

⁵⁶ Shukla Comments, p. 10.

major roadways.⁵⁷ The ten most hazardous air toxics in California, as identified by the California Air Resources Board (CARB) and the Office of Environmental Health Hazard Assessment (OEHHA), include:^{58,59}

- Acetaldehyde
- Benzene
- 1,3-Butadiene
- Carbon tetrachloride
- Diesel particulate matter (DPM)
- Formaldehyde
- Hexavalent chromium
- Methylene chloride
- Para-dichlorobenzene
- Perchloroethylene

Among these, DPM poses the greatest statewide cancer risk, accounting for approximately 70% of the known cancer risk from outdoor air toxics.⁶⁰ Mobile sources of criteria air pollutants and TACs like DPM, will be significant to sensitive receptors at and around the Project site.

Given that mobile source emissions from Interstate 5 are already existing, it is clear that the DSEIR failed to analyze conformance with Public Resources Code § 15126.2(a) which requires EIRs to “analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected.” In *California Bldg. Indus. Ass’n v Bay Area Air Quality Mgmt. Dist.*, the court held that an EIR must evaluate a project’s “potentially significant exacerbating effects on existing environmental hazards.”⁶¹ For example, if a project were to disturb contaminated soil and disperse the contamination, that change to existing environmental conditions would be a project impact that must be evaluated as such under CEQA.⁶² If the contaminated soil on the site were left undisturbed, however, that would simply be an existing environmental condition

⁵⁷ Shukla Comments, p. 11.

⁵⁸ CARB, Diesel Exhaust & Health; [Overview: Diesel Exhaust & Health | California Air Resources Board](#)

⁵⁹ Cal/EPA OEHHA and American Lung Association of California, Health Effects of Diesel Exhaust; <https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf>

⁶⁰ Shukla Comments, p. 11.

⁶¹ *California Bldg. Association v Bay Area Air Quality Management District* (2015) 62 C4th 369, 388.

⁶² *Id.* at 389.

that need not be examined as an impact of the project.⁶³ “Because this type of inquiry still focuses on the *project’s impacts on the environment* – how a project might worsen existing conditions – directing an agency to evaluate how such worsened conditions could affect the project’s future users or residents is entirely consistent with this focus and with CEQA as a whole.”⁶⁴ Here, by bringing residences to the area already affected by significant DPM and exacerbating such impacts, the Project results in a significant environmental effect pursuant to CEQA Guidelines Section 15126.2(a). The DSEIR therefore fails as an informational document under CEQA, and is not compliant with CEQA. The Project’s substantial environmental and public health impacts from mobile source emissions must be analyzed in a revised and recirculated SEIR before the Project can lawfully be approved.

The County’s failure to prepare a health risk assessment is a violation of CEQA. In *Sierra Club v. County of Fresno*, the County’s failure to include a health risk analysis in the EIR enabled the California Supreme Court to find “the EIR insufficient because it failed to explain why it was not feasible to provide an analysis that connected the air quality effects to human health consequences.”⁶⁵ Here, the DEIR is likewise insufficient because it fails to connect the Project’s air quality impacts with human health consequences. “Without such information, the general public and its responsible officials cannot make an informed decision on whether to approve the project.”⁶⁶ The DSEIR should be revised and recirculated to include a quantified health risk analysis to connect the Project’s impacts with human health consequences.

“CEQA requires that an EIR make a reasonable effort to discuss relevant specifics regarding the connection between two segments of information already contained in the EIR, the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely produce.”⁶⁷ Further, “[t]his discussion will allow the public to make an informed decision, as CEQA requires.”⁶⁸ The County must prepare a health risk assessment in a revised and recirculated SEIR before the Project can be approved.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Santa Clarita Organization for Planning the Environment* 106 Cal.App.4th 715, 724.

⁶⁷ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 521.

⁶⁸ *Id.*

B. The DSEIR Fails to Analyze Air Quality Impacts of and Generators

The DSEIR does not analyze emissions associated with the use of generators during Project construction.⁶⁹ But, the Air Quality Technical Report relies on mitigation PDF-AQ-5 which provides that “During the Project’s construction phase, electricity from on-site power poles shall be utilized where available... In the event of an emergency or during a power outage, the use of generators shall be permissible.”⁷⁰ The Air Quality Technical Report further provides that *“the air quality benefits of this project design feature are conservatively not quantified for purposes of this analysis because construction emissions are not recalculated as part of the Supplemental EIR.”*⁷¹ The County fails to analyze the air quality benefits or detrimental impacts of the use of generators, in violation of CEQA. The County’s failure to quantify emissions associated with backup generators is a failure to proceed in the manner required by law.

The DSEIR relies on Mitigation Measure AQ-7 which requires Applicant to “Use on-site electricity or alternative fuels rather than diesel-powered or gasoline powered, to the extent feasible.”⁷² The DSEIR’s Air Quality Technical Report provides that *“This measure will be binding on the Modified Project...”*⁷³ The DSEIR’s Air Quality Technical Report’s determination that the measure is binding on the Modified Project is not correct. The measure provides that on-site electricity or alternative fuels should be utilized, *to the extent feasible*. The language “to the extent feasible” renders Mitigation Measure AQ-7 unenforceable. Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments.⁷⁴ Failure to include enforceable mitigation measures is considered a failure to proceed in the manner required by CEQA.⁷⁵ In order to meet this requirement, mitigation measures must be incorporated directly into the EIR to be enforceable.⁷⁶ The DSEIR fails as an informational document for its lack of clear mitigation methods and lack of sufficient data to evaluate the proposed

⁶⁹ DSEIR, Greenhouse Gas and Energy Report Appendix A, p. 109 of 111.

⁷⁰ DSEIR Appendix 5.1 Air Quality Technical Report, p. 5.

⁷¹ *Id.*

⁷² DSEIR Appendix 5.1 Air Quality Technical Report, p. 6.

⁷³ *Id.*

⁷⁴ *Id.* at §15126.4(a)(2).

⁷⁵ *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 672.

⁷⁶ *Lotus v. Dept of Transportation* (2014) 223 Cal. App. 4th 645, 651-52.

project.⁷⁷ The DSEIR must be revised and recirculated to mitigate significant air quality impacts from generators.

V. THE DSEIR VIOLATES CEQA BECAUSE IT FAILS TO MEANINGFULLY ANALYZE AND IMPLEMENT ALL FEASIBLE MITIGATION MEASURES

“CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”⁷⁸ A core tenet of CEQA is to “[p]revent significant, avoidable damages to the environment by requiring changes in the projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.”⁷⁹ In fact, “**CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible.**”⁸⁰

A public agency cannot approve a project if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.⁸¹ CEQA defines “feasible” as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”⁸²

“The core of an EIR is the mitigation and alternatives sections.”⁸³ The CEQA Guidelines define mitigation as a measure which (1) avoids the impact altogether by not taking a certain action or parts of an action, (2) **minimizes the impact by limiting the degree or magnitude of the action and its implementation**, (3) rectifies the impact by repairing, rehabilitating, or restoring the impacted environment, (4) reduces or eliminates the impact overtime by preservation and maintenance operations during the life of the action, and (5) compensates for the impact by replacing or providing substitute resources or environments.⁸⁴

⁷⁷ *Id.*

⁷⁸ *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259; 14 Cal. Code Regs. (“CEQA Guidelines”) § 15003(f).

⁷⁹ CEQA Guidelines § 15002(a)(2).

⁸⁰ *Id.* § 15021(a) (emphasis added).

⁸¹ *Id.* § 15021(a)(2).

⁸² Pub. Resources Code § 21061.1; CEQA Guidelines § 15364.

⁸³ *Citizens of Goleta Valley v. Bd. of Supervisors (“Goleta II”)* (1990) 52 Cal.3d 553, 564.

⁸⁴ CEQA Guidelines § 15370 (emphasis added).

“In deciding whether changes in a project are feasible, an agency may consider specific, economic, environmental, legal, social, and technological factors.”⁸⁵ The duty to prevent or minimize environmental damage is implemented through the findings required by Public Resources Code § 21081 and CEQA Guidelines § 15091.⁸⁶ These sections prohibit a lead agency from approving a project with significant impacts unless it makes one or more of three findings:

- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.⁸⁷
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.⁸⁸
- (3) Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.⁸⁹

These findings must be supported by substantial evidence.⁹⁰ Substantial evidence is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”⁹¹ It includes “facts, reasonable assumptions predicated on facts, and expert opinion supported by facts,”⁹² but it does not include “[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment.”⁹³

Rejected alternatives and mitigation measures must be “truly infeasible.”⁹⁴ When an agency finds a specific alternative or mitigation measure to be infeasible, “its analysis must explain in meaningful detail the reasons and facts supporting the conclusion. The

⁸⁵ *Id.* § 15021(b).

⁸⁶ Pub. Resources Code § 21081(a); CEQA Guidelines § 15091(a).

⁸⁷ Pub. Resources Code § 21081(a)(1); CEQA Guidelines § 15091(a)(1).

⁸⁸ Pub. Resources Code § 21081(a)(2); CEQA Guidelines § 15091(a)(2).

⁸⁹ Pub. Resources Code § 21081(a)(3); CEQA Guidelines § 15091(a)(3).

⁹⁰ Pub. Resources Code § 21081.5; CEQA Guidelines § 15091(b).

⁹¹ CEQA Guidelines § 15384(a).

⁹² *Id.* § 15384(b).

⁹³ *Id.* § 15384(a).

⁹⁴ *City of Marina v. Bd. of Trustees of Cal. State Univ.* (2006) 39 Cal.4th 341, 369.

analysis must be sufficiently specific to permit informed decision-making and public participation.”⁹⁵ Conclusory statements are inadequate.⁹⁶ As the Supreme Court recently explained in *Sierra Club v. County of Fresno*:⁹⁷

When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises, and (2) makes a reasonable effort to substantively connect a project’s air quality impacts to likely ... consequences.⁹⁸

This holding applies equally to an EIR’s discussion of impacts and of the adequacy of mitigation measures, and restates the well-established rule that an EIR is inadequate as a matter of law where (1) it omits information required by law and (2) the omission precludes informed decision making by the lead agency or informed participation by the public.⁹⁹

If significant effects still exist after all feasible mitigation measures and alternatives have been implemented, a project may still be approved if the “unmitigated effects are outweighed by the project’s benefits.”¹⁰⁰ However, the Supreme Court clarified that, “[e]ven when a project’s benefits outweigh its unmitigated effects, **agencies are still required to implement all mitigation measures unless those measures are truly infeasible.**”¹⁰¹

The DSEIR fails to provide “a reasoned analysis supported by factual information” that the Project’s air quality and health risk impacts are adequately mitigated by measures in the State-certified EIR. In fact, substantial evidence in the expert reports attached demonstrates that the Project results in significant environmental impacts which are not sufficiently mitigated by mitigation measures in the State-certified EIR.

⁹⁵ *Marin Mun. Water Dist. V. KG Land California Corp.* (1991) 235 Cal. App.3d 1652, 1664.

⁹⁶ *Village Laguna of Laguna Beach v. Bd. of Supervisors* (1982) 134 Cal.App.3d 1022, 1034-35.

⁹⁷ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502.

⁹⁸ *Id.* at 516, citing *Laurel Heights Improvement Assn. v. Regents of University of Cal.* (“*Laurel Heights I*”) (1988) 47 Cal.3d 376, 405.

⁹⁹ *Id.*; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48,76-77.

¹⁰⁰ *Sierra Club*, 6 Cal. 5th at 524, citing *Laurel Heights I*, 47 Cal.3d at 391.

¹⁰¹ *Sierra Club*, 6 Cal. 5th at 524-25 (emphasis added).

Dr. Shukla's comments demonstrate that the Project's air quality and health risk impacts are not adequately mitigated by measures detailed in the State-certified EIR. Further, substantial additional mitigation measures are required to adequately reduce the Project's significant impacts. These include:

- 1. Idling Time Reduction to 2 Minutes:** While reducing idling time to 5 minutes can help mitigate some emissions, it is insufficient to address the substantial DPM emissions during construction, especially during prolonged idling periods. A reduction to 2 minutes is recommended, as this further limits the duration of unnecessary fuel combustion and particulate emissions. This practice can be enforced through monitoring and penalties for non-compliance. The implementation of this measure, in combination with the use of cleaner equipment, would significantly reduce the emissions of particulate matter during construction activities.¹⁰²
- 2. Switching to Cleaner Fuels:** Utilizing low-sulfur diesel or alternative fuels such as compressed natural gas (CNG), electric, or hybrid equipment can further reduce emissions from construction activities. These alternative fuel sources produce fewer particulates and toxic pollutants than conventional diesel fuel, especially when applied to high-use construction equipment.¹⁰³
- 3. Limiting the Use of Diesel-Powered Equipment During High-Pollution Days:** Implementing a restriction on the operation of diesel-powered construction equipment during days when air quality is forecasted to be poor can help mitigate temporary spikes in particulate pollution. This strategy can be informed by Air Quality Index (AQI) forecasts and help reduce the health risks associated with elevated exposure to DPM.¹⁰⁴

Dr. Shukla's comments provide substantial evidence that air pollution and health risk impacts from Project construction, operation, and from mobile sources will result in significant environmental impacts not disclosed in the State-certified EIR. Dr. Shukla's comments demonstrate that the above measures can feasibly reduce the Project's significant environmental impacts. These feasible mitigation measures must be included in a Mitigation Monitoring and Reporting Program in a revised and recirculated SEIR before the Project can lawfully be approved.

¹⁰² U.S. EPA, Learn About Idling Reduction Technologies (IRTs) for Trucks and School Buses; <https://www.epa.gov/verified-diesel-tech/learn-about-idling-reduction-technologies-irts-trucks-and-school-buses>

¹⁰³ U.S. EPA, Final Rule for Control of Emissions of Air Pollution From Nonroad Diesel Engines; <https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-control-emissions-air-pollution-nonroad-0>

¹⁰⁴ Shukla Comments, p. 10.

The above measures are considerably different from those analyzed in the previous EIR and would substantially reduce one or more significant effects on the environment, but the project proponents declined to adopt the mitigation measure or alternative, as they are not included in the DSEIR or the State-certified EIR. The above measures must be included in a revised SEIR before the Project can proceed.

VI. THE DSEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT NOISE IMPACTS

A. The Project Results in Significant Groundborne Vibration More Severe than the 2017 Project

The DSEIR concludes absent substantial evidence that the Project would not result in new or substantially more severe significant impacts than the 2017 Project with respect to groundborne vibration and groundborne noise levels. To the contrary, substantial evidence demonstrates that the Project will result in significant groundborne vibration which is substantially more severe than disclosed in the 2017 State-certified EIR.

CREED LA's noise and vibration expert consultant Jack Meighan identified a significant groundborne vibration impact to the sensitive receptors within the radio studio located 250 feet from potential development at the Project site and 185 feet from potential grading.¹⁰⁵

The State-certified EIR did not analyze or mitigate noise and vibration impacts to the recording studio. Substantial evidence in Mr. Meighan's comments demonstrates that construction vibration and groundborne noise caused by vibration-generating activities has the potential to exceed thresholds needed for quiet recording spaces.¹⁰⁶ Mr. Meighan calculated that loaded trucks and large bulldozers would generate noise over the threshold of significance at the closest grading activities.¹⁰⁷ Vibratory Rollers would similarly generate noise in excess of the threshold at the closest building construction of 250 feet.¹⁰⁸ Substantial evidence in Mr. Meighan's comments demonstrates that vibratory pile driving could

¹⁰⁵ Meighan Comments, p. 2.

¹⁰⁶ Meighan Comments, p. 2.

¹⁰⁷ Meighan Comments, p. 3.

¹⁰⁸ Meighan Comments, p. 3.

create a significant impact at 310 feet away, assuming the vibration peak is below 30 Hz.¹⁰⁹ This is a new significant impact not previously analyzed in the 2017 EIR which requires analysis and mitigation in a revised SEIR.

Mr. Meighan proposed feasible mitigation to reduce significant vibration impacts, including coordination between the studio's recording schedules and high-vibration construction activities within a certain buffer zone.¹¹⁰ These feasible measures should be included in a revised SEIR before the Project can be approved.

B. The Project Results in Significant Unmitigated Construction Noise Which is More Severe than the 2017 Project

The DSEIR concludes that construction noise impacts would be significant at Receptors 1, 2, and 3, but would be effectively mitigated by measures proposed in the DSEIR and the State-certified EIR.¹¹¹ However, substantial evidence in Mr. Meighan's comments demonstrates that the measures will not effectively reduce construction noise impacts to less than significant levels.¹¹² Mr. Meighan's comments demonstrate that each of the mitigation measures are not guaranteed to reduce noise levels below impact thresholds.¹¹³

First, Mitigation Measure ES/VCC-MM-NOI-1 requires the use of mufflers in all construction equipment, would not reduce noise because most equipment is already muffled, according to Mr. Meighan.¹¹⁴ Mr. Meighan's comments explain that virtually all construction equipment is fit with mufflers, so the referenced sound levels already account for the noise reduction these mufflers provide, and the additional reductions are unsupported.¹¹⁵ Therefore, mufflers would not result in further reductions to construction noise.¹¹⁶

Second, the DSEIR states that the "anticipated noise reduction benefits of [Mitigation Measure] ES/VCC-MM-NOI-2 and ES/VCC-MM-NOI-4 are not taken into account for purposes of this analysis."¹¹⁷ While mitigation measure NOI-2, a

¹⁰⁹ Meighan Comments, p. 3.

¹¹⁰ Meighan Comments, p. 3.

¹¹¹ DSEIR, p. 5.8-36.

¹¹² Meighan Comments, p. 4.

¹¹³ Meighan Comments, p. 2.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ DSEIR, p. 5.8-53.

logical arrangement of construction staging and reduction of idling, and mitigation measure NOI-4, a clear channel of communication between the contractor and community, can be good noise-reducing measures, neither would reduce worst-case scenarios of necessary construction closest to sensitive receivers.¹¹⁸ Therefore, these measures do not support the DSEIR's determination that "the County's stationary construction noise standards would not be exceeded by the Modified Project with mitigation,"¹¹⁹ because the mitigation measures are illusory.

Third, the DSEIR proposed Mitigation Measure ES/VCC-MM-NOI-3 which provides that a noise barrier is to be constructed to the north of the Valencia Commerce Center Planning Area project site.¹²⁰ However, the DSEIR fails to disclose the level of noise reduction it is expected to provide. This noise barrier would only reduce noise directly to the north of the Valencia Commerce Center project but would not adequately mitigate impacts to sensitive receptors along the south and east sides. The nearest existing noise sensitive receptors are the Travel Village RV Park, and the Higher Vision Church.¹²¹ The noise barrier to the north of the project site would not effectively mitigate significant construction noise impacts to sensitive receptors at either the Travel Village RV Park to the southwest or the Higher Vision Church to the southeast of the Valencia Commerce Center Planning Area project site.¹²²

The above mitigation measures do not effectively reduce construction noise impacts to less than significant levels, as demonstrated in Mr. Meighan's comments.¹²³ The measures do not mitigate impacts to all affected receivers and do not apply to worst case scenario noise impacts.¹²⁴ Further, the imagined reductions in construction noise impacts detailed in the DSEIR are based on erroneous reduction assumptions on unmuffled source levels.¹²⁵ As such, the Project will have significant construction noise impacts not analyzed, disclosed or mitigated in the State-certified EIR. The Project's significant unmitigated construction noise impacts must be analyzed in a revised SEIR before the Project can be approved.

¹¹⁸ Meighan Comments, p. 4.

¹¹⁹ DSEIR, p. 5.8-53.

¹²⁰ DSEIR, p. 5.8-51.

¹²¹ DSEIR, p. 5.8-21.

¹²² Meighan Comments, p. 4.

¹²³ Meighan Comments, p. 4.

¹²⁴ Meighan Comments, p. 4.

¹²⁵ Meighan Comments, p. 4.

VII. THE COUNTY CANNOT MAKE THE NECESSARY FINDINGS TO APPROVE THE PROJECT'S ENTITLEMENTS

In order to approve a Vesting Tentative Tract Map, the County must find that the Project is consistent with the General Plan.¹²⁶ Here, the County does not have substantial evidence to demonstrate conformance with the General Plan given the Project's significant inconsistency with General Plan Policies AQ 1.3, N 1.1 and N 1.3.

A. The DSEIR Fails to Analyze the Project's Inconsistency with the General Plan Noise Element

The Project's failure to adequately mitigate adverse noise impacts to nearby sensitive receptors at the Travel Village RV Park and the Higher Vision Church is a violation of the General Plan Policy N 1.1. General Plan Policy N 1.1 requires that the County “[u]tilize land uses to buffer noise-sensitive uses from sources of adverse noise impacts.”¹²⁷ Moreover, the failure to mitigate adverse construction and vibration impacts to Travel Village RV Park and the Higher Vision Church is a violation of General Plan Policy N 1.3 which provides that the County must “[m]inimize impacts to noise-sensitive land uses by ensuring adequate site design, acoustical construction, and use of barriers, berms, or additional engineering controls through Best Available Control technologies.”¹²⁸ The DSEIR's failure to include adequate buffering for detrimental noise impacts to Travel Village RV Park and the Higher Vision Church is a dereliction of the County's duty to minimize impacts to noise sensitive land uses pursuant to General Plan Policy N 1.3.¹²⁹

B. The DSEIR Fails to Analyze the Project's Inconsistency with the General Plan Air Quality Element

General Plan Policy AQ 1.3 requires the County to “Reduce particulate inorganic and biological emissions from construction, grading, excavation, and demolition to the maximum extent feasible.”¹³⁰ The DSEIR fails to analyze the Project's consistency with the General Plan's Air Quality Element and General Plan Policy AQ 1.3. Substantial evidence above and in the expert consultant reports

¹²⁶ Government Code section 66473.5.

¹²⁷ DSEIR, p. 5.8-13.

¹²⁸ DSEIR, p. 5.8-13.

¹²⁹ *Id.*

¹³⁰ Los Angeles County, General Plan Chapter 8: Air Quality Element, p. 121.

attached hereto demonstrate that the Project does not reduce particulate matter emissions to the greatest extent feasible, and additional mitigation is required to reduce significant health risk impacts from diesel particulate matter emissions associated with mobile sources, project construction, and project operation. The DSEIR must be revised and recirculated to adequately analyze the Project's inconsistency with General Plan Policy AQ 1.3 and mitigate the Project's significant health risk impacts associated with DPM emissions.

Given the Project's inconsistency with the General Plan Policies AQ 1.3, N 1.1, and N 1.3, the County cannot make the necessary findings to approve the Project's entitlements.

The County cannot approve the Vesting Tentative Tract Map absent additional mitigation reducing significant health risk and noise impacts.

In order to approve the Project's required Zone Change, the County is required to make the following findings:

1. Modified conditions warrant a revision in the Zoning Map as it pertains to the area or district under consideration.
2. A need for the proposed zone classification exists within such area or district.
3. The particular property under consideration is a proper location for said zone classification within such area or district.
4. The zone classification at such location will be in the interest of public health, safety and general welfare.
5. The Zone Change is consistent with the General Plan.
6. If the Zone Change will permit any uses prohibited by the existing zoning, that such Zone Change will not result in a need for a greater water supply for adequate fire protection or that the existing and proposed sources of water will provide an adequate water supply.¹³¹

¹³¹ County of Los Angeles Code Section 22.198.050.

Given the Project's inconsistency with General Plan Policies N 1.1 and N 1.3, the Project is not consistent with the General Plan and the County cannot make the necessary findings to approve the Zone Change.

In order to approve a Conditional Use Permit, the County must make the following findings:

- 1) The proposed use will be consistent with the adopted General Plan for the area.
- 2) The requested use at the location proposed will not:
 - a. Adversely affect the health, peace, comfort, or welfare of persons residing or working in the surrounding area;
 - b. Be materially detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the site; and
 - c. Jeopardize, endanger, or otherwise constitute a menace to the public health, safety, or general welfare.

3) The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping, and other development features prescribed in this Title 22, or as is otherwise required to integrate said use with the uses in the surrounding area.

- 4) The proposed site is adequately served:
 - a. By highways or streets improved as necessary to shorten trip length and reduce vehicle miles traveled for the kind and quantity of traffic such use would generate; and
 - b. By other public or private service facilities as are required.¹³²

Here, substantial evidence in CREED LA's comments and those of our expert consultant demonstrate that the Project will "adversely affect the health, peace, comfort, or welfare of persons residing or working in the surrounding area" in violation of Municipal Code Section 22.158.050 subdivision B(2)(a). Moreover, due to the Project's inconsistency with the General Plan Policy AQ 1.3, N 1.1 and 1.3, the County cannot make the necessary findings to approve the Conditional Use Permit.

¹³² County of Los Angeles Code Section 22.158.050.

In order to approve a Development Agreement, the County is required to make the following findings:

- a. The proposed Development Agreement is consistent with the General Plan and any applicable Community, Area, or Specific Plan.
- b. The proposed Development Agreement complies with zoning, subdivision, and other applicable ordinances and regulations.
- c. The proposed Development Agreement is consistent with the public safety, welfare, and convenience, making it in the public interest to enter into the Development Agreement with the applicant.
- d. The proposed Development Agreement will not:
 - i. Adversely affect the health, peace, comfort, or welfare of persons residing or working in the surrounding area;
 - ii. Be materially detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the site; or
 - iii. Jeopardize, endanger, or otherwise constitute a menace to the public health, safety, or general welfare.¹³³

Here, the Project is inconsistent with the General Plan and would be materially detrimental to the use, enjoyment of property of other persons located in the vicinity of the site given the Project's significant air quality, health risk, noise, and vibration impacts. Moreover, the Project may jeopardize the public health, safety and general welfare due to the Project's significant health risk associated with diesel particulate matter emissions. The County, therefore, cannot make the necessary findings to approve the Project's Development Agreement, absent substantial additional analysis and mitigation in a revised SEIR circulated for public review and scrutiny.

VIII. CONCLUSION

For all of the reasons discussed above, the DSEIR for the Project remains wholly inadequate under CEQA. It must be thoroughly revised to provide analysis of, and mitigation for, all of the Project's significant impacts. These revisions will necessarily require that the DSEIR be recirculated for public review. Until the

¹³³ County of Los Angeles Code Section 22.162.040.

February 18, 2025
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DEIR has been revised and recirculated, as described herein, the County may not lawfully approve the Project.

Thank you for your consideration of these comments. Please include them in the record of proceedings for the Project.

Sincerely,


Kelilah D. Federman

Attachments
KDF:acp

7726-005acp



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